

IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

**FILED**

SID J. WHITE

SEP 10 1984

AUBREY DENNIS ADAMS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

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CLERK SUPREME COURT

By *Danya*  
Chief Deputy Clerk

CASE NO. 5845

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

Aubrey Dennis Adams will be referred to as either Defendant or Mr. Adams. Record references will be designated as follows:

- TT: The transcript of the original trial.
- R: The record on direct appeal from the original trial.
- SR: The supplemental record on the appeal from the denial of the Motion for Post Conviction Relief.
- A: The Appendix to the Petition for Writ of Habeas Corpus filed simultaneously with this Brief.

STATEMENT OF THE CASE

On April 4, 1978, the Defendant was indicted by the Marion County Grand Jury for the first degree murder of Trisa Thornley. (R-9). The Trial Judge granted a motion for change of venue and the case was tried before a jury in Lake County beginning on October 12, 1978.

At the close of the trial, the jury returned a verdict finding the Defendant guilty of first degree murder. (R-115). The penalty phase of the case commenced about one week after the verdict. At the close of that proceeding, the jury returned an advisory verdict recommending the imposition of the death penalty. (R-130).

Sentencing was held on January 19, 1979, at which time the Trial Judge accepted the recommendation of the jury and sentenced the Defendant to death. (R-140-142). The sentence of death was based upon a conclusion that the mitigating circumstances were insufficient to outweigh the aggravating circumstances. (R-146).

The Defendant's conviction was affirmed by the Florida Supreme Court and four members voted to affirm the sentence of death. Two members of the Court dissented from the sentence. Adams v. State, 412 So.2d 850 (Fla. 1982). Mr. Justice Boyd dissented from the part of the decision affirming the death sentence by stating that a comparison of the aggravating and mitigating circumstances warranted a reduction of the sentence to life. Mr. Justice McDonald also

dissented from the part of the decision which affirmed the death penalty.

A Writ of Certiorari to the United States Supreme Court was denied. Adams v. Florida, 459 U.S. 882 (1982).

On August 21, 1984, the Governor of Florida denied clemency and signed a Death Warrant requiring Mr. Adams's execution by electrocution between noon on September 13, 1984, and noon on September 20, 1984. Mr. Adams's execution is presently scheduled for Wednesday, September 19, 1984, at 7:00 a.m.

Defendant then filed in the lower court his Motion for Post Conviction Relief to vacate judgment and sentence. Together with that motion, Defendant filed an Application for Stay of Execution with supporting memorandum of law and a Motion for Payment of Fees for Expert Witnesses and For Discovery.

A preliminary hearing on the motions was held September 7, 1984. At the hearing, the circuit judge, the Honorable William F. Edwards, entered orders summarily denying the motion to vacate, the application for a stay of execution, and the motion respecting discovery and fees and expenses for expert and lay witnesses. The judge thereafter refused to stay Mr. Adams's execution pending appeal to this Court. Notice of Appeal was filed on September 7, 1984.



## STATEMENT OF THE FACTS

The following statement of the facts is taken from the Supreme Court of Florida's opinion on direct appeal.

The victim, eight years of age, left school on January 23, 1978, at about 2:30 P.M. Her body was found on March 15, 1978, in a wooded area near Ocala, Florida, by three men who were gopher hunting. The defendant's involvement in the disappearance and death of the victim was shown through circumstantial evidence and by statements, both written and oral, made by him to officers of the Ocala police department.

In his written statements, the defendant stated that he saw the victim walking home from school about a block and a half from her house and offered to give her a ride. She got in the car and defendant drove away with her. The defendant remembered "being stopped somewhere and she was screaming and I put my hand over her mouth," and she quit breathing. In his oral statement, the defendant said he had removed the clothes from the victim and used some cord which he carried in his car to tie her up so that she would fit into plastic bags. He also said that he tried to have sexual relations with her, but couldn't bring himself to do it. He denied having sexual relations with her.

Two expert witnesses testified that the cause of death was strangulation, but one of the experts stated that the child could have died from manual suffocation. One expert rendered an opinion that the victim's wrists had been taped prior to death. The defendant, in his oral statement, said that he had removed the victim's clothes, but there was an indication from this statement that the clothes were removed after she quit breathing. However, the state argues that as a

matter of logic, the clothes were removed prior to the time the wrists were bound, and at that time, the victim was still alive.

The jury found the defendant guilty of murder in the first degree, and after hearing evidence in the penalty phase of the trial, recommended that the defendant be sentenced to death.

\* \* \*

The trial court found three aggravating circumstances: (1) that the capital felony was committed while defendant was engaged in or attempting to engage in, or in the flight after committing or attempting to commit rape and/or kidnapping; (2) that the capital felony was committed for the purpose of avoiding or preventing a lawful arrest; (3) that the capital felony was especially heinous, atrocious, or cruel.

The trial judge found three mitigating circumstances: (1) that the defendant had no significant history of prior criminal activity; (2) that the capital felony was committed while the defendant was under the influence of extreme or emotional disturbance; (3) that the defendant's age (20) was of significance.

The jury recommended death and the trial judge concurred in that recommendation.

Adams v. State, 412 So.2d 850-51, 54 (Fla. 1982).

ARGUMENT

POINT ONE

THE LOWER COURT ERRED IN REFUSING  
THE DEFENDANT AN EVIDENTIARY HEARING

A carefully delineated procedure has been established for consideration of motions pursuant to Rule 3.850. See State v. Weeks, 166 So.2d 892 (Fla. 1964). Under this procedure, the trial court must initially consider the motion to determine if it sets forth allegations sufficient to constitute a legal basis for relief. If the motion on its face states grounds for relief, the trial court must then look at the files and records in the case to ascertain whether they conclusively reveal that the movant is entitled to no relief. In making this determination, the court may not look to matters outside the official records.

When the files and records fail to refute conclusively the factual allegations in the motion, the trial court must hold a prompt hearing, determine the issues and make findings of fact and conclusions of law. See, e.g., Meeks v. State, 382 So.2d 673, 676 (Fla. 1980). The same standard applies to the appellate court's review where a hearing has been denied in a 3.850 proceeding. Rule 9.140(g), Fla. R. App. P.

The allegations presented in Defendant's motion to vacate and the instant record cannot be said to show that Defendant is conclusively entitled to no relief. The allegations presented show substantial constitutional claims which, if proven, would require that his sentence be

vacated (SR-37-39).

The allegations, based on extra-record evidence reveal that Mr. Adams has been deprived of his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments. Specifically, such evidence would show that a legitimate doubt exists concerning Mr. Adam's competency to stand trial or to participate in the sentencing phase of his trial. It would further show that he had ineffective assistance of counsel at trial. The trial judge erred in summarily dismissing these factual disputes in the face of relevant extra-record evidence proffered by the Defendant.

A. Trial Judge Erred in Refusing to Hold an Evidentiary Hearing Concerning the Appellant's Competency to Stand Trial or to Participate in the Sentencing Phase of His Trial.

Every defendant is constitutionally entitled to a fair trial under the concept of due process. Trial and conviction of a legally incompetent defendant violates that constitutional right. Drope v. Missouri, 420 U.S. 162 (1975). To determine whether a defendant is competent, the Supreme Court of the United States has fashioned a two-part test: Does the defendant have: (1) the present ability to consult with his lawyer with a reasonable degree of rational understanding; and (2) a rational and factual understanding of the proceedings. Dusky v. United States, 362 U.S. 402 (1960). Dusky is applicable to state courts. Bolius v. Wainwright, 597 F.2d 986 (5th Cir. 1979). See also, Fla. R. Crim. P. 3.211.

Case law further permits appellant to demand, via his post conviction relief motions, retrospective determination of competency. Fowler v. State, 255 So.2d 513 (Fla. 1971).

Where there is a post conviction diagnosis of psychological factors which cast "real, substantial and legitimate doubt" on a pretrial determination of competence, a subsequent hearing is required. Pride v. Estelle, 649 F.2d 324 (5th Cir. 1981). A denial of a hearing in the face of a real, substantial and legitimate doubt would constitute a denial of due process. Id.

Evidence outside of the Motion and record demonstrate that a "legitimate doubt" exists that the defendant was competent to stand trial or, alternatively, to participate in the sentencing phase of his trial. Expert opinion by Sandra Gilels, Ph.D., would have shown that the Defendant has a mental disorder which renders him incapable of recalling traumatic experiences. This mental disorder, known as catathymic amnesia, rendered the Defendant incapable of aiding his counsel.<sup>1/</sup>

Based upon the testimony which would have been submitted by Dr. Gilels as to catathymic amnesia, and the original trial counsel's view that Mr. Adams "could not remember and

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<sup>1/</sup>The evidence of the existence of this mental illness is contained in the Public Records in Dr. Gilels' psychological evaluation of Aubrey Dennis Adams which is part of the record in Mr. Adams's clemency proceeding.

therefore could not provide information concerning the killing that would assist with his defense" (R-133), there is a "legitimate doubt" concerning Mr. Adam's competency to stand trial or, alternatively, to participate in the sentencing phase of his trial.

It is the position of Appellant that competency to stand trial includes the ability to consult with his attorney and assist in his defense in both guilt and sentencing phases of his trial.

The trial judge's summary dismissal of the Motion denied Mr. Adams the opportunity to present this evidence, and, hence, resolve this factual dispute in his favor. Certainly, this Motion and the portion of the record relied upon do not conclusively show that the Defendant is entitled to no relief

The Appellant's inability to assist counsel at trial resulted from a mental disorder which prevented him from recalling certain traumatic experiences. This mental disorder has recently been diagnosed. It is recognized that amnesia per se does not render a defendant incapable of standing trial or of receiving a fair trial. Robbins v. State, 312 So.2d 243, 245 (Fla. 2d DCA 1975). However, Appellant is not simply alleging that he is unable to answer "some questions." See Mauldin v. State, 382 So.2d 844, 846 (Fla. 1st DCA 1980). The requisite test regarding when a Defendant's amnesia renders him incompetent to participate in judicial proceedings has been met in this case because Mr.

Adams is unable to answer questions that are important to his defense. Id. at 846.

Specifically, Mr. Adams is unable to recall the facts regarding the aggravating and mitigating circumstances in his case, and hence, is unable to assist counsel regarding this issue. There can be no dispute that these facts are critically important. This is especially true in this case since the aggravating factors which were found to exist all require a specific finding of intent.

B. Trial Judge Erred in Refusing to Hold an Evidentiary Hearing Concerning the Competency of Defendant's Trial Counsel.

The Motion alleges numerous specific acts and omissions on the part of trial counsel (SR-37-39).

Briefly stated, Defendant intended to introduce evidence showing that his original trial counsel: (1) failed to adequately investigate the issue of Defendant's competency to stand trial and assist in the preparation of his defense; (2) limited the pre-trial examination and evaluation of Defendant to one psychiatrist and that this prevented him from recognizing that the Defendant was incompetent to stand trial as well as identifying other mitigating factors such as an inability to control his actions or conform them to the requirements of the law; (3) failed to present available expert testimony as to the degree to which Defendant could control his actions or conform them to the requirements of the law; and (4) failed to object to the death penalty and

jury instructions on five distinct grounds as discussed in Point TWO below.<sup>2/</sup> The evidence supporting these allegations would have established ineffectiveness of trial counsel.

That the issue of life and death in this case is a close question is evidenced by this Court's split decision in upholding the original sentence in this case. Furthermore, in its original opinion, this Court specifically stated that a factor in its decision was that there was no evidence of mental illness in this case. Adams v. State, 412 So.2d 850, 857 (Fla. 1982). A hearing in this case would have produced evidence that trial counsel was ineffective by failing to produce such evidence. The evidence would have shown, but not have been limited to, the following mental illnesses and psychological disorders.

1. Catathymic Amnesia.
2. Significant personality disturbance.<sup>3/</sup>
3. Hostile, perhaps paranoid, tendencies.<sup>3/</sup>
4. An inability to appropriately control emotions.<sup>3/</sup>
5. Sexual immaturity.<sup>3/</sup>
6. ". . .[A] considerable history of sexual difficul-

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<sup>2/</sup>In Point TWO below, the aforementioned factual allegations are applied to the standard promulgated by this Court in Knight and Strickland, discussed below.

<sup>3/</sup>See footnote 1, supra.



ties and abnormality onsetting at pubescence."<sup>4/</sup>

7. "From the subject's past behavioral history, [he] appears to be passive aggressive, with strong psychopathic sexual episodes."<sup>4/</sup>

Furthermore, other information, such as the basis for the statements in the Psychological Screening Report, is undoubtedly available if counsel is given adequate time and resources to prepare and present this case.

This evidence goes not only to the competency to stand trial but also to mitigation. It is respectfully submitted that the original trial counsel in this matter was ineffective in failing to develop and present such evidence.

Many of the facts necessary to support allegations as to the trial counsel's ineffective performance are established by the record and not refuted; the facts related to other allegations are not reflected or refuted in the record. Accordingly, the trial court clearly erred in summarily denying an evidentiary hearing. The files and records fail to refute conclusively the factual allegations in the Motion.

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<sup>4/</sup>This evidence is also contained in the Public Records in a Psychological Screening Report submitted by the Department of Offender Rehabilitation as part of the report submitted by the Florida Parole and Probation Commission to the Governor and Cabinet.

POINT TWO

THE CIRCUIT COURT ERRED IN HOLDING THAT DEFENDANT WAS NOT DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AND AT SENTENCING IN VIOLATION OF HIS RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS.

The Circuit Court denied Defendant's claim of ineffective counsel, holding that the record showed that trial counsel had been effective. (SR-300-02). The Circuit Court further denied Defendant's request for a hearing to prove factual allegations regarding ineffective counsel. (SR-295, 297).

The denial of an opportunity to prove factual allegations regarding ineffectual counsel was clearly improper as discussed in Point ONE above. Defendant intended to solicit evidence that, in and of itself, would have shown ineffective trial counsel.

Aside from these factual allegations which required a hearing, Defendant also alleged that trial counsel was ineffective because of a failure to object to the death penalty and to certain jury instructions. Trial counsel failed to object on any of the five distinct grounds discussed below. (TT-1366-67; A-29-30).

Any one of these ineffectiveness claims meets the tests for ineffective counsel set out in Knight v. State, 394 So.2d 997 (Fla. 1981) and Strickland v. Washington, \_\_\_\_ U.S. \_\_\_\_, 80 L. Ed. 2d 674 (1984). That is, each is (1) an omission or overt act; (2) which was a substantial and serious deficiency

measurably below that of competent counsel in death cases; and (3) created a reasonable probability (sufficient to undermine confidence) that, but for counsel's error, the result would have been different. Knight at 1001; Strickland at 682.

The record clearly shows that trial counsel made none of the objections discussed below. Accordingly, the Circuit Court should have held that trial counsel was ineffective.

A. Trial Counsel Failed to Object to a General Verdict of Guilty Which Verdict was Based Either Upon a Finding of Premeditated Murder or an Alternative Theory Under the Felony Murder Rule.

The death penalty was based on a general verdict of guilt which in turn was based either upon a finding of premeditated murder or an alternative theory under the felony murder rule. This violated Defendant's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments.

Although it is possible that the Defendant was convicted on the basis of premeditated murder, it is also possible that he was convicted upon the alternative felony murder rule theory submitted to the jury. As shown below, felony murder cannot constitutionally support the imposition of the death penalty because there may not be any deliberate intent to kill. Here, since it cannot be determined which of the theories of guilt the jury accepted, Defendant's sentence of death cannot be upheld.

In Gregg v. Georgia, 428 U.S. 153 (1976), the Court

reasoned that the penalty of death is not disproportionate when imposed "for the crime of murder, and when a life has been taken deliberately by the offender. . . ." 428 U.S. at 187 (emphasis added).

The question of whether the death penalty could be applied to a defendant convicted on the basis of the felony murder rule was presented in Lockett v. Ohio, 438 U.S. 568 (1978). The Court decided that case upon another ground reserving the question for future consideration. However, in a concurring opinion, Mr. Justice White specifically addressed the issue:

The infliction of death upon those who had no intent to bring about the death of the victim is not only grossly out of proportion to the severity of the crime but also fails to contribute significantly to acceptable, or indeed any, perceptible goals of punishment. . . .

Id. at 626.

Most recently, in Enmund v. Florida, 458 U.S. 782 (1982), the Court held that the imposition of the death penalty on a person who aids and abets a felony in the course of which murder is committed by others but who does not himself kill, attempt to kill, or intend to kill, constitutes a violation of the Eighth and Fourteenth Amendments.

In the instant case the jury could have found Mr. Adams guilty of murder by reason of a death which occurred during the commission of a felony (i.e. kidnapping). The jury could have believed Mr. Adams did not deliberately kill, but

nevertheless found him guilty of murder based on the felony murder rule. Although the jury also could have found him guilty of premeditated murder, a sentence of death should not be upheld upon the mere "possibility" that it was based upon a constitutionally acceptable ground. Indeed, the possibility that the conviction was based upon a ground which cannot constitutionally support the imposition of death is all that is necessary to arrive at the conclusion that the sentence must be vacated. See Stromberg v. California, 283 U.S. 359 (1931), which held that if a case is submitted to a jury on alternative theories, the unconstitutionality of any of the theories requires that the conviction be set aside. Here, no less than in Stromberg, it is possible that the jury convicted the Defendant on the constitutionally objectionable felony murder rule theory. Accordingly, the death sentence was invalid and accordingly should have been objected to by trial counsel.

B. Trial Counsel Failed to Object to Jury Instructions Which Allowed the Jury to Consider All the Aggravating Circumstances Listed in the Death Penalty Statute Even Though There was No Evidence to Support Same.

Mandated instructions to the jury in the penalty phase of the trial to consider all the aggravating circumstances specified in the death penalty statute created a substantial risk that death was imposed on the basis of aggravating circumstances not supported by the evidence. Such

instructions were violative of the Fifth, Sixth, Eighth and Fourteenth Amendments.

In Straight v. Wainwright, 422 So.2d 830, 832 (Fla. 1982), this court held that Florida juries must be instructed in every capital case on all of the statutory aggravating circumstances, regardless of the lack of evidence to support them. Such instructions were given in the instant case.

By instructing the jury to consider all the aggravating circumstances in the statute, the risk is created that the jury's sentencing verdict in a particular case will be based upon improperly considered factors. In this case, there was no evidence to support several aggravating circumstances. The jury was instructed, for example, on aggravating circumstances relating to (1) committing a crime while under sentence of imprisonment; (2) having previously been convicted of another capital offense, or of a felony involving the use or threat of violence to some persons; (3) knowingly created a great risk of death to many persons; and (4) having committed the crime for the purpose of avoiding or preventing a lawful arrest. There was no evidentiary support for such aggravating circumstances. Nevertheless, these circumstances may have appeared to be present because instructions to the jury to consider them could have led the jury to find one or more of the circumstances present, and hence, led the jury to base a sentence verdict on such findings.

Since the jury is not required to articulate the

findings upon which its sentence recommendation is based, neither the trial court nor this court can know whether the advisory verdict is based upon properly guided discretion. A trial judge cannot disregard a jury's recommendation of death unless there are strong reasons to believe that reasonable persons cannot agree with the recommendation. Accordingly, there is a substantial risk that an unguided jury recommendation critically infected the sentence imposed by the trial judge.

Hence, the instructions as given herein as required by Florida law created a substantial risk that Defendant was sentenced to death upon the recommendation of a jury whose discretion was not channelled by facts and evidence and was, accordingly, arbitrarily permitted to recommend the death penalty.

C. Defendant Failed to Object to Jury Instructions Which Allowed the Jury to Consider all Lesser Degrees of Homicide Even Though There was No Evidentiary Basis for Same.

Florida's unbroken practice, until October 1, 1981, of instructing the jury in a murder case on all degrees of homicide regardless of the evidence left, unchannelled the jury's guilt phase discretion, inevitably leading to arbitrary results on the question of guilt in first degree murder cases.

From 1939 until October 1, 1981, Florida law required jury instructions in a first degree murder case on all

degrees of homicide regardless of the evidentiary basis for such instructions. Sections 919.14, 919.16, Fla. Stat. (1965), adopted as Fla. R. Crim. P. 3.490 and 3.510 (1968). On October 1, 1981, the Supreme Court of Florida ended this practice by approving amendments to the Rules of Criminal Procedure which prohibited instructions on lesser included offenses unless such instructions were supported by the evidence. In Re Florida Rules of Criminal Procedure, 401 So.2d 979 (Fla. 1981).

By requiring the jury to be instructed on lesser included offenses, for which there was no evidence to support verdicts on the lesser offenses, Florida law invited jurors to dispense mercy wherever they deemed mercy appropriate. Without question Florida juries did grant "jury pardon[s]," Bailey v. State, 224 So.2d 296, 297 (Fla. 1969), in capital murder cases prior to October 1, 1981. See, e.g., Killen v. State, 92 So.2d 825 (Fla. 1957).

Because the practice of instructing on lesser included offenses when there is no evidence to support verdicts on such offenses "inevitably lead[s] to arbitrary results," Hopper v. Evans, 456 U.S. 605, 611 (1982), the Florida death penalty scheme as applied to the conviction in this case is inherently unconstitutional under the Fifth, Sixth, Eighth and Fourteenth Amendments.

Since the arbitrariness arising from this practice infects the "pool" of capital cases against which each



capital case, including Defendant's, has been compared, the arbitrariness goes to the heart of the requirement of consistency and evenhandedness underlying the validity of Florida's capital sentence scheme. Accordingly, that entire scheme must be stricken as unconstitutional.

D. Trial Counsel Failed to Object to Jury Instructions that Required the Death Penalty Recommendation to be Agreed Upon by Seven or More Jurors, Even Though Six is Sufficient to Recommend Life.

Defendant's Fifth, Sixth, Eighth, and Fourteenth Amendment rights were violated by application of the Florida death penalty statute in the instant case, insofar as the standard jury instructions for capital cases, between 1975 and 1981, provided that the jury be instructed that "[t]he law requires that seven or more members of the jury agree upon any recommendation advising either the death penalty or life imprisonment." Florida Standard Jury Instructions in Criminal Cases 80 (1975). Because such an instruction did not correctly state Florida law, juries may have been coerced unlawfully to reach majority verdicts, thereby depriving capital defendants of due process in capital sentencing proceedings.

In Rose v. State, 425 So.2d 521 (Fla. 1982), the Florida Supreme Court held that an "Allen charge" should not have been given where the jury reported to the judge that it was "tied six to six, and no one will change their mind at the moment."

On the basis of Rose, the instruction given in the instant case, that seven or more jurors must agree on the life or death recommendation, was an erroneous statement of Florida law. Such an instruction creates a substantial risk that death can be imposed when life is properly the verdict reached by the jury. Pursuant to this instruction, a jury which is equally divided has not reached a verdict. Accordingly, a juror might surrender an honest conviction and belief under such circumstances upon the mistaken belief that it is necessary to reach a verdict.

E. Trial Counsel Failed to Object to Jury Instructions that Failed to Clearly Define and Explain the Nature and Function of Mitigating Circumstances and Failed to Inform the Jury They Could Recommend Life Even Though They Found Aggravating Circumstances.

Petitioner's constitutional rights under the Fifth, Sixth, Eighth and Fourteenth Amendments were violated by the jury instructions given in the penalty phase of this case because they failed to clearly define or provide clear instructions on the function and nature of mitigating circumstances. See, e.g., Tucker v. Zant, 724 F.2d 882, 890-92 (11th Cir. 1984); Goodwin v. Balkcom, 684 F.2d 794, 798-803 (11th Cir. 1982), cert. denied 103 S.Ct. 1798 (1983); Spivey v. Zant, 661 F.2d 464, 467-72 (5th Cir. 1981), cert. denied 458 U.S. 1111 (1982).

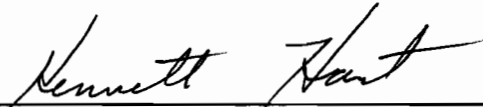
Further, the jury instructions failed altogether to make clear the jurors' ability to recommend that the Defendant be

sentenced to life imprisonment, even if they found aggravating circumstances. See Westbrook v. Zant, 704 F.2d 1487, 1503 (11th Cir. 1983).

CONCLUSION

The Order of the trial judge denying the Motion for Post Conviction Relief should be reversed and the case remanded for a full evidentiary hearing. Alternatively, Defendant should be granted a new trial and the sentence of death should be vacated.

DATED this 10<sup>th</sup> day of September, 1984.



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ATTORNEYS FOR APPELLANT/DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing and have been furnished by HAND DELIVERY to: Margene Roper, Assistant Attorney General, Office of the Attorney General, Criminal Division, Tallahassee, Florida 32301; by U. S. MAIL to Ben Ayres, N.W. Pine Avenue, Ocala, Florida 32670 and by HAND DELIVERY to Honorable Jim Smith, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32301 this 10<sup>th</sup> day of September, 1984.

  
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ATTORNEY