OCALL\PETITION

SUPREME COURT OF FLORIDA

JOHN O'CALLAGHAN,	:	Circuit Court Case No. 80-9519-CF-10-B (Broward)
Petitioner,	:	Case No. 71949
-against-	:	
RICHARD L. DUGGER, SECRETARY, DEPARTMENT OF CORRECTIONS, STATE OF FLORIDA	:	
Respondent.	:	

PETITION FOR A WRIT OF HABEAS CORPUS

I. Introduction

Petitioner, John O'Callaghan, seeks a writ of habeas corpus and an order requiring that new sentencing proceedings be held in this death penalty case in which the original sentencing proceedings violated Hitchcock v. Dugger, 107 S.Ct. 1821 (1987), and subsequent cases decided by this Court.

A new sentencing hearing is required to redress constitutional violations which occurred at O'Callaghan's trial and sentencing hearing. O'Callaghan is entitled to relief because, contrary to the rulings in Hitchcock and subsequent holdings of this Court, he was denied a fair and constitutional sentencing proceeding when the jury was instructed to limit its consideration of mitigating

factors to certain enumerated circumstances. The instructions given violated O'Callaghan's constitutional rights under the Fourteenth and Eighth Amendments to have a jury consider any and all aspects of his character, record, or the circumstances of the offense as mitigating factors. The jury's advisory sentence was constitutionally infirm because it was based upon deliberations made under erroneous and constitutionally repugnant constraints which caused the exclusion of relevant mitigating evidence. The Judge erroneously confined his deliberations to the same factors, and therefore the reliability of the death sentence has been completely undermined.

II. Jurisdiction

This is an original action under Rule 9.100(a) of the Florida Rules of Appellate Procedure. This Court has original jurisdiction pursuant to Rule 9.030(a)(3) of the Florida Rules of Appellate Procedure and Article V, Sec. 3(b)(9) of the Florida Constitution.

III. The Facts Relied Upon by Petitioner

A. Statutory Background

In response to the United States Supreme Court's decision in Furman v. Georgia, 408 U.S. 238 (1972), the Florida legislature passed a death penalty statute with lists of aggravating and mitigating factors. Fla. Stat.

Ann. Secs. 921.141(5), (6) (West 1985). These factors were intended to guide the discretion of the court, and thereby to prevent the arbitrary or discriminatory application of the death penalty. Note, Florida Legislative and Judicial Response to Furman v. Georgia: An Analysis and Criticism, 2 Fla. St. U. L. Rev. 108, 139 (1974). In Cooper v. State, 336 So.2d 1133 (Fla. 1976), cert. denied 431 U.S. 925 (1977), this Court interpreted the statute to require that the consideration of mitigating evidence be limited to the seven factors prescribed by the legislature. Evidence concerning other matters was shunned because its speculative nature and emotional appeal threatened the proceedings with the undisciplined discretion condemned by Furman. Id. at 1139.

In 1978, the United States Supreme Court decided Lockett v. Ohio, 438 U.S. 586 (1978). Lockett made it clear that a statute which operates to restrict the jury's consideration of evidence in mitigation violates the Eighth Amendment. While there was obvious friction between Cooper and Lockett, this Court distinguished Cooper as involving only the probative value of mitigating evidence. Songer v. State, 365 So.2d 695 (Fla. 1978). Songer stated that the statutory scheme did not preclude the consideration of non-statutory mitigating evidence. Id. at 700.

While Cooper and Songer may not have actually conflicted with each other, the two decisions created confusion among members of the criminal bar and among the courts. Even after Songer, many lawyers and judges believed that they were required to exclude any mitigating evidence not described in the statute. See Hitchcock, 107 S.Ct. at 1823.

In July 1979, the Florida legislature amended the statutory sentencing procedure in an apparent attempt to meet the requirements of Lockett. However, the amendment merely added to the pre-existing confusion. It did not expand the list of seven statutory mitigating circumstances set forth in Fla. Stat. Ann. Sec. 921.141(6). It did change Fla. Stat. Ann. Sec. 921.141(1) so that, instead of providing that "evidence may be presented [at a sentencing hearing] as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6)" (emphasis added), the amended subsection (1) provides that "evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in

subsections (5) and (6)" (emphasis added). The amendment also deleted "as enumerated in subsection (6)" from subsections (2)(b) and (3)(b). 1979 Fla. Laws, Ch. 79-353. However, the Ohio statute invalidated in Lockett had similarly provided for the presentation of evidence of "the nature and circumstances of the offense and the history, character and condition of the offender" as bearing upon the existence or non-existence of Ohio's list of mitigating circumstances, Lockett, supra, 438 U.S. at 612, and this feature did not save that statute from invalidation. Thus, it is questionable that the 1979 Florida amendment effected any significant correction of the constitutional infirmities in the Florida law under Lockett. What is unquestionable is that, even after the amendment, confusion persisted in the Florida courts as to what could be considered in mitigation.[1]

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[1]The confusion existed when O'Callaghan was tried in 1981. Even though the portion of the statute which described the sentencing procedure in general (Subsection (1)) was amended to provide for some consideration of "the nature of the crime and the character of the defendant" at the sentencing hearing, the list of mitigating circumstances remained the same and was introduced "Mitigating circumstances shall be the following:..." Fla. Stat. Ann. Sec. 921.141(6) (West 1975) (emphasis added). Thus, the statutory list of mitigating circumstances was the same as when Hitchcock was tried, and the statutory change did not prevent virtually the same constitutionally infirm "Hitchcock" charge from

(Footnote Continued)

O'Callaghan is a victim of this confusion. Whatever effect should have been achieved by the Songer dictum and the statutory amendment, the charge given the jury continued to describe the law as it has been interpreted in Cooper. In Hitchcock, Justice Scalia noted the confusion which plagued capital cases in Florida on this issue and held that, when relevant non-statutory mitigating evidence has not been considered, a new sentencing is required. 107 S.Ct. at 1824. Since such evidence was excluded from consideration by the trial judge's charge and comments during the trial in this case, O'Callaghan is entitled to relief under Hitchcock.

B. Procedural History

In March and April 1981, O'Callaghan and co-defendant Walter Lebron ("Beau") Tucker were tried in the Circuit Court of the 17th Judicial Circuit in and for Broward County for the murder of Gerald Leon Vick. On April 8, 1981, O'Callaghan was convicted of first degree murder, T.R. 1134-35,[2] and Tucker was convicted of second-degree murder. T.R. 1134. On April 9, 1981 the jury recommended

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(Footnote Continued)
being given in O'Callaghan's case.

[2]Portions of the Trial Record cited herein are attached as Exhibit A.

the death sentence, T.R. 1170, and on May 12, 1981 Thomas M. Coker, Jr., the trial judge, sentenced O'Callaghan to death. T.R. 1190. Tucker was sentenced to a 20-year term, running concurrently with a ten-year term he was already serving for violation of a previous grant of probation. T.R. 1176-83. This Court affirmed O'Callaghan's conviction and sentence. O'Callaghan v. State, 429 So.2d 691 (Fla. 1983).

In 1984, O'Callaghan moved, pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure, to set aside his conviction and vacate the death sentence. The motion was denied without an evidentiary hearing on May 24, 1984. This Court reversed the denial and remanded the case for a hearing on the ineffectiveness of O'Callaghan's trial counsel. O'Callaghan v. State, 461 So.2d 1354 (Fla. 1984).

The Rule 3.850 hearing was held on January 9 and 10, 1986,[3] and Judge Coker denied the motion by Order dated January 20, 1987. An appeal of this denial was taken, and by Order dated September 15, 1987 the case was remanded in light of disciplinary proceedings against O'Callaghan's

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[3]Relevant excerpts from the Rule 3.850 hearing transcript are cited herein as "3.850 R. ___" and are attached hereto as Exhibit B.

attorney, which strongly indicated that his performance was impaired by alcoholism when he represented O'Callaghan.

By Order on Remand dated November 20, 1987, Judge Coker declined to hold a hearing on trial counsel's alcoholism as it affected his representation of O'Callaghan and again denied the Rule 3.850 motion. O'Callaghan has moved for rehearing based upon profferred evidence, and that motion is now pending in the Circuit Court. In the meantime, O'Callaghan has commenced this habeas corpus proceeding on the wholly independent ground that Hitchcock and this Court's subsequent precedents require a new sentencing hearing in this case.[4]

C. The Jury Instructions, Which Precluded Consideration of Non-Statutory Mitigating Evidence

The record shows that the charge given to the jury was incomplete and that the jury followed a procedure which has been declared to be unconstitutional.

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[4]The jury instruction to ignore non-statutory mitigating evidence also had the effect of precluding the presentation of that evidence; if not, then defense counsel was ineffective in not presenting it. The latter claim is being pressed as a part of O'Callaghan's Rule 3.850 motion; the former is partly the subject of this habeas corpus petition. However, regardless of whether O'Callaghan's claim regarding non-statutory mitigating evidence is premised on Hitchcock or ineffective assistance, the result should be the same: a new sentencing hearing is required.

Judge Coker charged the jury to consider the aggravating factors in the then-existing Florida statute.[5] After reciting the aggravating circumstances, Judge Coker continued:

> The mitigating circumstances which you may consider, if established by the evidence are these: (A) That the Defendant has no significant history of prior criminal activity; (B) that the crime for which the Defendant is to be sentenced was committed while the Defendant was under the influence of extreme mental or emotional disturbance; (C) that the victim was a participant in the Defendant's conduct or consented to the act; (D) that the Defendant was an accomplice in the offense for which he is to be sentenced, but the offense was committed by another person and the Defendant's participation was relatively minor; (E) that the Defendant acted under extreme duress or under the substantial domination of another person; (F) the capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired; (G) the age of the Defendant at the time of the crime.

T.R. 1165.[6] The jury was not instructed to consider any

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[5]See Fla. Stat. Ann. Sec. 921.141(5) (West 1975).

[6]The charge comported in substance, but not precisely, with the then applicable statute, which provided:

> (6) Mitigating circumstances. - Mitigating circumstances shall be the following:
> (a) The defendant has no significant history of prior criminal activity.
> (b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
> (c) The victim was a participant in the

(Footnote Continued)

mitigating circumstances other than those set out in Fla. Stat. Ann. Sec. 921.141(6) (West 1975). The instructions were virtually identical to those given in Hitchcock. See 107 S.Ct. at 1824.

Similarly, Judge Coker did not consider non-statutory mitigating circumstances in arriving at his decision to sentence O'Callaghan to death. During jury selection, he explained the bifurcated trial to potential jurors as follows:

> In the bifurcated section of the trial, if we ever reach that point, the Court is going to read to you and allow you to take with you the instructions that I read, and in that portion of the trial I am going to read to you nine aggravating circumstances. I am going to read to you seven mitigating circumstances. It is your responsibility as the jury to read each of these aggravating circumstances and see if you feel that after reading them and studying them enough of those apply to justify your recommendation of the death penalty, and if you feel there are sufficient numbers of the

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(Footnote Continued)
defendant's conduct or consented to the act.
(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.
(e) The defendant acted under extreme duress or under the substantial domination of another person.
(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
(g) The age of the defendant at the time of the crime.
Fla. Stat. Ann. Sec. 921.141(6) (West 1975).

> aggravating circumstances, then you go to the mitigating circumstances, study them and determine whether or not there are enough of the mitigating circumstances to override the aggravating circumstances. Based upon these considerations, then at that point, you will make your recommendation to me. Do you follow what I am saying to you?

Tr. 171-72 (emphasis added).

During voir dire, a potential juror said she "guessed" that she knew what aggravating and mitigating circumstances were. Judge Coker made the following remark: "Don't guess because I am going...to tell you what the aggravating circumstances are. I am going to tell you what the mitigating circumstances are." T.R. 172 (emphasis added). Thus, the Judge believed that only seven factors could be considered as mitigating evidence. And he consistently and erroneously impressed this belief upon the jury in his comments at voir dire and in his instructions.

D. The Sentencing Factors Considered by the Judge, Which Did Not Include Non-Statutory Mitigating Evidence

During the sentencing proceedings, Judge Coker set out the grounds for O'Callaghan's death sentence. The statutory aggravating circumstances were read one by one, and the Judge found that four of them applied. T.R. 1186-1188. Next, the Judge recited the seven enumerated

mitigating factors and stated that each did not apply. He then concluded:

> In summary, the Court finds that of the nine aggravating circumstances, four were applicable to this case. As to the mitigating circumstances, none applied in this case.

T.R. 1188-89.

Nowhere in the record did the Judge refer to non-statutory mitigating circumstances.

IV. Nature of the Relief Sought

O'Callaghan requests that his death sentence be vacated and that his case be remanded to the trial court for jury and court consideration of any relevant mitigating evidence during a re-sentencing, as required by the Eighth and Fourteenth Amendments to the United States Constitution. Hitchcock v. Dugger; Skipper v. South Carolina, 106 S.Ct. 1669 (1986); Eddings v. Oklahoma, 455 U.S. 104 (1982); Lockett v. Ohio, 438 U.S. 586 (1976); Thompson v. Dugger, 515 So.2d 173 (Fla. 1987); Downs v. Dugger, 514 So.2d 1069 (Fla. 1987); Riley v. Wainwright, No. 69, 563, slip op. (Fla. Sept. 3, 1987); Morgan v. State, 515 So.2d 975 (Fla. 1987); McRae v. State, 510 So.2d 874 (Fla. 1987); Lucas v. State, 490 So.2d 943 (Fla. 1986); Harvard v. State, 486 So.2d 537 (Fla.), cert. denied, 107 S.Ct. 215 (1986). In addition, O'Callaghan

seeks to present mitigating evidence that has come to light since the original sentencing, as required by this Court's decision in Lucas v. State.

V. Argument

In light of the constitutional deprivation which occurred during the trial and the mitigating evidence available, the reliability of the sentencing has been completely undermined. Under the circumstances, the imposition of the death penalty would be impermissibly arbitrary, and a new sentencing procedure must be granted.

A. The Instructions in O'Callaghan's Case Violated the Ruling in Hitchcock

Hitchcock represents a substantial change in the jurisprudence of Florida's death penalty. Downs, 514 So.2d at 1070, Thompson, 515 So.2d at 175. Hitchcock evolved from the Supreme Court's decisions in Eddings and in Lockett. Lockett reaffirmed the importance of each capital defendant receiving individualized sentencing consideration, holding that the sentencer must consider "any aspect of the defendant's character or record and any of the circumstances of the offense that the Defendant proffers" in mitigation of the death sentence. 438 U.S. at 604. In Eddings, the Court held that the State could not, by statute, preclude the sentencer from considering any factor in mitigation in a capital sentencing

proceeding. 455 U.S. at 113-15. After Lockett, it was thought that the opportunity to present, coupled with the presentation of non-statutory mitigating evidence, was enough to overcome a possible Lockett violation. Hitchcock v. State, 432 So.2d 42, 44 (Fla. 1983) (McDonald and Overton, JJ., concurring); Echols v. State, 484 So.2d 568, 575-76 (Fla. 1985), cert. denied, 107 S.Ct. 241 (1986). The Supreme Court rejected this reasoning in Hitchcock and held that a death sentence is invalid whenever the jury or sentencer fails to consider all evidence in mitigation, regardless of whether non-statutory mitigating evidence may have been presented. Hitchcock, 107 S.Ct. at 1825. In Hitchcock, the Supreme Court found that the same jury instructions given in O'Callaghan's trial were unconstitutional because they have the effect of excluding relevant mitigating evidence. 107 S.Ct. at 1824.

In a series of cases following Hitchcock, this Court has recognized the infirmity of the instructions given in O'Callaghan's case. See Downs v. Dugger, 514 So.2d at 1072; Morgan v. State, 515 So.2d at 976. Similarly, this Court has found that, when the trial judge fails to consider non-statutory mitigating evidence, a death sentence must now be overturned because of Hitchcock. See Downs v. Dugger, 514 So.2d at 1071; Thompson v. Dugger, 515 So.2d at 173. The charges given to the juries in

these cases were identical or substantially similar to the charge that was given to O'Callaghan's jury. The evidence of the improper scope of Judge Coker's deliberation is also substantially similar to the evidence presented in these cases. See, e.g., Morgan v. State, 515 So.2d at 976. The constitutional violations which occurred in these cases can only be rectified by a new sentencing proceeding. Hitchcock, 107 S.Ct. at 1824.

B. The Effect of the Erroneous Instructions Was to Exclude Relevant Mitigating Evidence

The instructions in this case had the effect of limiting the jury's consideration of clearly relevant evidence and O'Callaghan's presentation of that evidence.

Judge Coker repeatedly emphasized to the jury that its duty was to follow the law as given by the court. After giving the same instructions found to be improper in Hitchcock, the Judge again admonished the jurors that their decision must be based on the law as explained by the court. Both the prosecution and defendant's counsel also repeatedly emphasized the importance of the jury's obligation to follow Judge Coker's charge. See, e.g., T.R. 105, 351, 286.

While admonishing the jury to follow the charge is normally a procedure intended to produce a fair verdict,

the procedure is only effective if the charge is correct. In this case it served only to insure that a violation of O'Callaghan's constitutional rights would occur at sentencing. Having been erroneously instructed that they could only consider seven factors in mitigation, the jury recommended that O'Callaghan be sentenced to death. Since the jury was prohibited from considering all the relevant mitigating evidence, its recommendation is invalid. Hitchcock, 107 S.Ct. at 1824.

Similarly, Judge Coker's comments during voir dire, his charge to the jury, and his findings during the sentencing demonstrate that he confined his deliberations to the statutory mitigating factors. Thus, the record contains no indication that O'Callaghan's non-statutory evidence was ever acknowledged. To the contrary, the record strongly supports the conclusion that this evidence was not considered.

The question before the jury in this multi-party transaction was whether any of the four principal players were sufficiently more blameworthy than the rest to warrant a death sentence. The State preemptively answered the question in part when it granted full immunity to two of the four -- Cyndi LaPointe and Anthony Cox -- leaving the jury to deal only with O'Callaghan and Tucker. The trial court then hopelessly misled the jurors when, in its

instructions, it effectively told them to disregard in their sentencing deliberations the relative culpability of Tucker and the immunity granted to Cox and LaPointe.

As a result, substantial non-statutory mitigating evidence of the relative culpability of the co-defendant, Tucker, was in the trial record but was placed outside of the jury's consideration by the erroneous instructions. It is now well-settled that this evidence should have been considered. See, e.g., Downs v. Dugger, 514 So.2d at 1072; Gafford v. State, 387 So.2d 333 (Fla. 1980); Slater v. State, 316 So.2d 539, 542 (Fla. 1975).

At the penalty phase, the jury heard, for the first time, compelling evidence of Tucker's leadership role in the crime when O'Callaghan's counsel read into the record the deposition testimony of Leslie Knuck, an eye witness who saw Tucker put a gun to the victim's head and say that he was going to blow his brains out. T.R. 1145-49. This evidence was certainly relevant to the relative culpability of Tucker and O'Callaghan, and confirmed that it was Tucker, and not O'Callaghan, who had formed an intent to kill Vick. Yet the jury's verdicts of first degree murder for O'Callaghan and second degree murder for Tucker, and the respective sentences of death for O'Callaghan and only 20 years for Tucker, stood the facts of the case upside-down.

Unfortunate as it was that this crucial evidence was not presented at the guilt phase, the error was fatally compounded when, even though it was presented at the penalty phase, the jury was directed to ignore it. With respect to the relative role of Tucker, the instruction limited the jury's consideration to only the two mitigating circumstances enumerated in Fla. Stat. Ann. Sec. 921.141(6)(d) and (e), which were characterized by Judge Coker in his charge as follows:

> (D) That the Defendant was an accomplice in the offense for which he is to be sentenced, but the offense was committed by another person and that the Defendant's participation was relatively minor;
>
> (E) That the Defendant acted under extreme duress or under the substantial domination of another person;...

T.R. 1165; compare Fla. Stat. Ann. Sec. 921.141(6)(d) and (e).[7]

The instructions therefore told the jury that, unless O'Callaghan's participation was "minor" (Sec. 921.141(6)(d)), or unless he acted under "extreme duress" or the "domination" of Tucker (Sec. 921.141(e)), any evidence of Tucker's role -- and his lenient sentence -- would be

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[7]As noted above, the charge did not comport precisely with the statute. See fn. 6 at p. 9 supra.

irrelevant to the sentencing decision. Nothing could have been further from the truth. See Slater v. State, 316 So.2d at 542. Cf. Hitchcock v. Dugger, 107 S.Ct. at 1824. The jury was entitled to know and to consider the fact that Tucker wanted to kill Vick and stated his intention to do so, as well as the fact that Tucker was sentenced to 20 years in prison and could be paroled in as early as eight years. See Brookings v. State, 495 So.2d 135, 145 (Fla. 1986); Malloy v. State, 382 So.2d 1190, 1193 (Fla. 1979).

Similarly, the jury should have been permitted to consider as mitigating evidence the fact that immunity was granted to two key actors in this case -- Anthony Cox and Cyndi LaPointe. The jury knew of Cox's immunity (T.R. 1037), but was precluded from considering this, despite the fact that this circumstance is properly non-statutory mitigating evidence. See Palmes v. Wainwright, 460 So.2d 362, 364 (Fla. 1984) at 364; Routly v. State, 440 So.2d 1257, 1266 (Fla. 1983).

These examples of the exclusion of relevant evidence from jury consideration are emblematic of a larger problem which lies submerged in any case in which Hitchcock claims are present. Non-statutory mitigating factors arise throughout the trial, not merely in the sentencing phase. Harvard v. State, 486 So.2d at 539. It is the trial

judge's job to define mitigating evidence for the jury; it is then the jury's task to identify that evidence and weigh it in reaching an advisory sentence. As a result of the erroneous instructions, the jury was prevented from performing this task properly. "The trial court must at the very least instruct in accordance with the standard jury instruction that the jury may consider in mitigation, 8. any other aspect of the defendant's character or record any any other circumstance of the offense." Floyd v. State, 497 So.2d 1211 (Fla. 1986). The charge given in this case did not even meet the pre-Hitchcock standard set out in Floyd.

Other evidence of non-statutory mitigating circumstances which was available but not necessarily presented at the trial require a new sentencing hearing here as well. For example, O'Callaghan's family history included childhood vision handicaps and learning disabilities. See Exhibits C and D hereto.[8] In addition, it has been established in post-conviction proceedings that O'Callaghan suffered from a drug dependency and other mental disorders. See 3.850 R. 266-70, 342.

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[8]The testimony of O'Callaghan's father and an affidavit by O'Callaghan's mother were introduced in the Rule 3.850 hearing. The deposition transcript is attached as Exhibit C; the Affidavit is Exhibit D.

Psychiatrists and psychologists who examined O'Callaghan in post-conviction proceedings found non-statutory mitigating circumstances (see 3.850 R. 274-77, 342-43, 371-76) and found that he has substantial potential for rehabilitation. 3.850 R. 278-79. Yet none of this evidence was considered, nor could it have been on account of the infirm jury instructions.

The evidence of non-statutory mitigating considerations in this case encompassed most of the factors long validated by this Court: (1) relative culpability of the co-defendant; (2) lenient sentence given the co-defendant; (3) immunity given to key actors; (4) family history and childhood experiences; (5) medical and psychiatric history; (6) potential for rehabilitation. Consideration of this evidence would have had an ameliorating effect on the jury's sentencing recommendation, and it should have affected the Judge's sentencing decision as well.

The non-statutory evidence was compelling; yet the jury and judge did not consider any of it. The death sentence which was imposed despite the existence of this evidence would almost certainly have been a sentence of life had only the jury been permitted to consider all the available facts. O'Callaghan's right to a reasoned, moral decision by the jury was completely subverted. The only

way to alleviate the resulting prejudice is to grant O'Callaghan a new sentencing proceeding and thereby allow him to present all the evidence to a jury.

VI. Conclusion

For the reasons set out in this petition, John O'Callaghan respectfully requests that his death sentence be vacated, and that his case be remanded for new sentencing proceedings.

Dated: New York, New York
February 12, 1988

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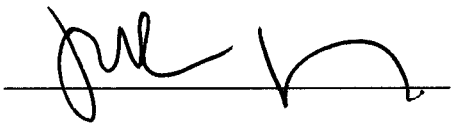
By: 

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Petition for Writ of Habeas Corpus upon the following attorneys by first-class mail on February 12, 1987.

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