IN THE SUPREME COURT OF FLORIDA

JAMES MICHAEL MACK,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NO. 71,099

APPEAL FROM THE CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY
FLORIDA

REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS
112-A Orange Avenue
Daytona Beach, Fla. 32014
904-252-3367

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS (CONT.)

TABLE OF CITATIONS

TABLE OF CITATIONS (CONT.)

IN THE SUPREME COURT OF FLORIDA

JAMES MICHAEL MACK, Appellant,	)	
vs.	)	CASE NO. 71,099
STATE OF FLORIDA, Appellee.	)	

REPLY BRIEF OF APPELLANT

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT PURSUANT TO HARRIS V. STATE, 437 So.2d 787 (Fla. 1983), THE TRIAL COURT COMMITTED FUNDAMENTAL ERROR BY OMITTING JURY INSTRUCTIONS IN A CAPITAL TRIAL REGARDING NECESSARILY LESSER INCLUDED OFFENSES WHERE THE DEFENDANT DID NOT PERSONALLY, KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO SAID INSTRUCTIONS, THEREBY DEPRIVING JAMES MACK OF HIS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS OF LAW.

A. In Contravention of Appellant's Constitutional Rights to Counsel and to Due Process of Law, this Court Erred in Allowing the Record of the Unreported Charge Conference to be Reconstructed Without Allowing Either James Mack or his Lawyer to be Present at the Hearing Where Reconstruction was Accomplished.

On April 26, 1988, the state filed a Motion to Relinquish Jurisdiction and for Reconstruction of the Record. The state contended that Robert Robbins, Mack's defense counsel at

trial, specifically indicated at an unreported charge conference that he had in fact discussed the waiver of lesser included offenses with Mack and that it was Mr. Mack's personal decision, after explanation of the alternatives and ramifications, to waive instruction on all lesser included offenses and thereby present the jury with an "all or nothing" situation. The state did not dispute the fact that James Mack was not present at this unreported charge conference. The undersigned counsel filed a response to the state's motion pointing out the problems with such an ex post facto determination. Counsel also contended that such a reconstruction was unnecessary in light of the holding of this Court in Harris v. State, 438 So.2d 787 (Fla. 1983). On May 6, 1988, this Court granted the state's motion and temporarily relinquished jurisdiction for the purpose of reconstructing the record with the specifics of the unreported and untranscribed jury charge conference and in particular the discussion and representations of the defense counsel as to the waiver of the jury instructions on the lesser included offense charges. The undersigned counsel then filed a Motion for Rehearing and/or Clarification reiterating his previous objections and also requesting clarification as to whether or not James Mack would be allowed to be present at any hearing held to reconstruct the record. Appellant submitted that he had an absolute right to be present under due process guarantees. After the state filed a response to Appellant's motion for rehearing and/or clarification, this Court denied the motion on June 6, 1988.

On July 29, 1988, the trial court held a hearing on the state's Motion for Reconstruction of the Record. (R994-1006) At that hearing, the prosecutor and Mack's trial counsel submitted written statements indicating their recollections as to what occurred at the unreported charge conference. The trial court read each of the statements and the parties discussed what occurred at that unreported charge conference. After the hearing, the trial court rendered an order on August 2, 1988, adopting the statements of counsel and a transcript of the July 29 hearing as reconstruction of the record, i.e. the unreported charge conference. (R1007) James Mack's attorney of record, the undersigned counsel, first heard about the July 29, 1988, hearing during the first week of August. In order to find out what transpired at that hearing, th undersigned attempted to contact the trial judge, the prosecutor and Mack's trial counsel, but was unsuccessful. The undersigned counsel received the supplemental record during the second week of August. Appellant filed a Motion to Strike the Reconstructed Record which this Court denied on August 22, 1988.

James Mack objects to the method in which the record of the unreported charge conference was reconstructed. Robert Robbins, Mack's trial counsel, filed the necessary paperwork to instigate this appeal. (R936-941) On October 6, 1987, the trial court adjudged Mack to be insolvent and appointed the Office of the Public Defender to represent Mack during his appeal. (R942-943) Accordingly, the undersigned counsel served an Initial Brief in Mack's behalf on February 12, 1988. Appellant submits

that the undersigned counsel is Mack's attorney of record and that Robert Robbins' representation of Mack has ended. Accordingly, reference in the transcript of the July 29, 1988, hearing to Robert Robbins as "Attorney for the Defendant" is completely erroneous. Robbins' role at the hearing was more of a witness rather than an advocate. Appellant submits that he had an absolute, fundamental, constitutional right to be represented by counsel at the July 29 hearing. The failure of the parties below to notify the undersigned counsel of that hearing resulted in a deprivation of Mack's constitutional rights to counsel and to due process guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States.

The trial court's and state's failure to provide notice to Mack's attorney of the July 29, 1988, hearing resulted in specific prejudice to Mack. If the undersigned counsel had been notified of the hearing, counsel would have asked the trial court to allow James Mack to be present at that hearing. If the trial court denied said request, the undersigned counsel would have specifically objected on the record to Mack's absence. Furthermore, the record of the hearing, clearly reflects a discussion off the record at Mr. Robbins' request. Neither the undersigned counsel nor this Court has any way to determine what transpired during that discussion off the record. (R998) At the July 29 hearing, the trial court stated that Mr. Robbins came back into chambers without Mr. Mack and represented to the Court that Mr. Mack had waived his presence during the charge conference. (R999) At the hearing, Mr. Robbins commented, "I believe that's

correct, Your Honor." (R999) If he had been permitted to be present, the undersigned counsel would have questioned Mr. Robbins' memory as to this statement. He appears to be unsure, if that is in fact what occurred. The undersigned counsel would have attempted to explore his memory on this subject.

Additionally, the state attorney engaged in argument at the July 29 hearing concerning this issue on appeal. The prosecutor stated at that hearing:

> Mr. Mack took an active role in this trial. As a matter of fact, he even participated at some point in time, in the voir dire process, asking questions of jurors, said he was active throughout the course of this trial. So consequently, it did not surprise me to hear Mr. Robbins represent, during this charge conference, that Mr. Mack didn't want any lesser included offenses, that was a gamble he wanted to take, essentially. (R1000)

The prosecutor's assertion about Mack's "active role" at trial is patently erroneous. During jury selection, this same prosecutor objected to Mack's request to personally question jurors. The trial court agreed that such a procedure would be improper. (R28-29) When Mack attempted to personally question the jurors, the state again objected and the trial court sustained that objection. (R45) James Mack wanted to be at the charge conference and informed his trial attorney of that fact. Mr. Robbins informed Mr. Mack that it was unnecessary for him to be present at such a conference. He returned later that day and reported that the conference would not be held that day anyway. The next day, Mr. Robbins informed Mr. Mack for the first time that we're going for "all or nothing." Mr. Mack doubted the wisdom of this

particular decision and certainly disputes any contention that he had any input into that decision. Since neither Mr. Mack nor his attorney was permitted to be present at the hearing to reconstruct the record, Mr. Mack is compelled to assert these facts and this argument in this reply brief. This procedure violates Mack's constitutional rights to counsel and to due process guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States. Appellant will now reply to the state's argument on this issue and the Answer Brief.

B. Reply to the State's Answer Brief.

As the state concedes, this point is controlled by Harris v. State, 438 So.2d 787, 797 (Fla. 1983), wherein this Court held:

> But, for an effective waiver, there must be more than just a request from counsel that these instructions not be given. We conclude that there must be an express waiver of the right to these instructions by the defendant, and the record must reflect that it was knowingly and intelligently made.

In its contention that this point was not preserved for appeal since there was no specific, contemporaneous objection, the state misses the point of the Harris holding. The language quoted above clearly indicates that the error is fundamental and no objection is required. Harris puts an affirmative duty on the trial court to obtain a personal, knowing and intelligent waiver by the defendant on the record. The cases upon which the state relies to support its contention are either non-capital cases not

controlled by Harris or cases that were overruled sub silentio by this Court in Harris.

The state next contends that Appellant has failed to demonstrate reversible error contending that the record reveals that the lesser-included offense instructions were withheld at the personal request of Mack, through counsel. See Answer Brief page 10. The state also adds that Mack's request, through counsel was made after full and complete consideration of the ramifications of that decision. Initially, Appellant strongly contends that this last statement by the state is completely unsupported by the record. The only mention of the discussion between defense counsel and Mr. Mack on this issue was that they did discuss it and that Mack wished to waive the lesser included offenses. (R1001-1009,1010). There is absolutely no indication that trial counsel explicitly explained the full and complete consideration of the ramifications of that decision to Mr. Mack. As pointed out in Beck v. Alabama, 447 U.S. 65 (1980), the ramifications of such a decision are considerable. The Court reasoned that the failure to give the jury the "third option" of convicting of an appropriate lesser included offense, as opposed to either conviction or acquittal, impermissibly enhanced the risk of an unwarranted conviction. Without a "third option," a conviction could indicate a jury's belief that the defendant had committed some serious crime deserving of punishment, while an acquittal could reflect a hesitancy to impose the ultimate sanction. The Beck Court held that such possibilities "introduce a level of uncertainty and unreliability into the fact-finding

process that cannot be tolerated in a capital case." 447 U.S. at 643.

It is clear from a reading of Beck that the decision at issue is a momentous one. That is why it is so critical to completely understand the full ramifications of a decision to "go all or nothing." This was the basis of this Court's holding in Harris, supra. This Court announced a necessary rule in Harris. Appellant strongly disagrees with the state's argument that this Court should recede from its holding in Harris. The Harris holding is clearly not dicta as evidenced by this Court's reaffirmance of Harris in Jones v. State 484 So.2d 477 (Fla. 1986). In Jones, this Court declined to apply the formal requirement of Harris in a non-capital context. This Court specifically noted that the facts in Jones were poor ones on which to carve out an exception to the general principle that a client is bound by the acts of his attorney performed within the scope of the latter's authority. Id. at 579. Jones was present at the charge conference where trial counsel asked Jones if he understood the consequences of the waiver. Trial counsel stated that he had conferred with the defendant concerning this issue prior to the conference in chambers. The trial court instructed Jones' defense counsel to explain to Jones the definition of a lesser included offense. After a pause in the proceedings, defense counsel stated that Jones understood and still wished to waive the lesser included offense.

Most importantly, James Mack's trial was a capital one, unlike Jones. Another distinguishing factor is that Mack was not

present at the charge conference where trial counsel waived the instructions at issue. Mack strongly disputes the state's contention that the record indicates that Mack was apparently present when trial counsel announced the waiver. See Answer Brief at p.11. Counsel for the state is extrapolating a bit too much in arguing such a position.

In Jones, even after defense counsel stated that he had conferred with his client and that he wished to waive the instructions, the Jones trial court required the additional step of defense counsel specifically explaining the definition of a lesser included offense to Jones. No such step was taken at James Mack's trial.

The policy reasons behind this Court's Harris rule are numerous and valid ones. Where the Harris rule is followed, the appellate court has an express and personal waiver on the record. An appellate state court or a federal court can examine the record and easily determine that a capital defendant understood the nature and ramifications of such a decision such that an intelligent and knowing waiver is apparent. In a capital context, this is critical. If one waits to make this determination during post-conviction proceedings, several years have elapsed. Any trial attorney worth his salt would have had numerous trials since the one that is the focus of post-conviction proceedings. Who can remember? This is especially a problem in considering subtle nuances that may or may not have occurred between attorney and client when explaining the monumental ramifications of a Beck waiver. Additionally, a capital defendant has the problem of

reduced credibility in testifying at post-conviction proceedings. Credibility is weighed against the possible benefits to the witness testifying. Unfortunately, the perception frequently is that a capital defendant will perjure himself in order to escape the specter of a death sentence.

If the dictates of Harris are followed, the reviewing court is presented with an express, personal waiver on the face of the record. This eliminates grounds for post-conviction proceedings as to that issue and brings the system closer to the ideally perfect trial. A Harris waiver is analogous to a plea colloquy under Rule 3.172 of the Florida Rules of Criminal Procedure. The colloquy is on the record available for all to see. It is an express and personal waiver of many constitutional rights. The trial court must determine on the record that the plea is both intelligent and voluntary.

This Court has determined in Harris that the waiver of lesser included offenses in a capital trial is at least as important as a guilty plea colloquy. This is not surprising considering the importance of the decision. If a capital defendant intends to roll the dice, he should hold the cup. He should be allowed to examine those dice before and after the roll. That way, when the time comes to execute the capital defendant, he can say to himself that it is fair and just.

To allow counsel to waive such an important right outside the presence of a capital defendant is dangerous and unfair. Unfortunately, it seems that the right to representation of counsel is sometimes turned into a requirement of counsel.

Counsel too frequently becomes the master rather than the advisor and representative. The waiver at issue can be likened to informed consent for medical surgery. All the doctors may agree that that leg needs to be amputated, but it's the patient's leg and it is his ultimate decision. Pursuant to the dictates of Harris, that decision should be personal, knowing, voluntary clearly expressed on the record.

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY IMPROPERLY RESTRICTING APPELLANT'S PRESENTATION OF EVIDENCE AT THE PENALTY PHASE IN CONTRAVENTION OF APPELLANT'S CONSTITUTIONAL RIGHTS UNDER THE SIXTH AND EIGHTH AMENDMENTS AND CONTRARY TO THE DICTATES OF SKIPPER V. SOUTH CAROLINA, 476 U.S.__ (1986), AND EDDINGS V. OKLAHOMA, 455 U.S. 104 (1982).

The state concedes that this Court has established and repeatedly applied the principle that lesser sentences imposed on accomplices may be considered in mitigation. See Answer Brief at page 19. The state correctly points out that the Appellant fails to cite the case where this Court specifically extended the "disparate treatment" analysis to include comparison of advisory sentencing recommendations by juries in companion cases. However, the state appears to place great emphasis on the fact that James Mack attempted to introduce evidence of the jury's recommendation of a life sentence for Mack's co-defendant, Robert North, rather than the fact that North was actually sentenced to life imprisonment rather than to die in the electric chair. The state points out that Lockett v. Ohio, 438 U.S. 586 (1978) specifically noted that its ruling was based upon the need for dealing with the "uniqueness of the individual" in each capital case through "an individualized decision." The state concludes from this rationale that evidence of an accomplice's sentence is relevant while a jury's recommendation regarding that particular sentence is completely irrelevant. Appellant fails to see the distinction. Certainly, the accomplice's ultimate sentence is based upon the

individualized factors discussed in Lockett just as the jury's recommendation as to sentence is also based on that particular criteria. The state's logic is flawed in this regard.

In adopting the aforementioned argument, the state concedes that an accomplice's sentence is relevant evidence that should be admitted. James Mack was in a difficult position in his trial. Although Robert North had been convicted of first-degree murder and the jury had recommended life rather than death, the trial court had not yet sentenced North. All James Mack had to present to his own jury was North's recommendation. James Mack attempted to present the only evidence that he had at the time of his trial on the issue of North's ultimate sentence. This evidence included the fact that another jury had recommended that Robert North live. Mack's jury knew the importance of a jury recommendation in a capital case. The trial court instructed James Mack's jury about the importance of their own penalty recommendation. The court informed Mack's jury that their recommendation was entitled to "great weight." If they had been informed of North's jury recommendation, they would have known that North most likely would have been sentenced to life rather than death. It is therefore clear that the jury's recommendation regarding North was extremely relevant in Mack's case. As a result of the trial court's ruling, James Mack was prohibited from arguing that Mack's more culpable co-defendant, Robert North, would most likely be sentenced to life imprisonment for the same crime.

In their Answer Brief, the state goes to some lengths to point the finger at Mack as the more culpable of the two perpetrators. See Answer Brief, pp. 21-24. Initially, Appellant strongly objects to the state's assumption that North's statement, referred to in the state's disclosure report, places greater culpability on Mack. See Answer Brief at page 21. The reference only indicates that North's statement implicates himself as well as Mack in the burglary and murder. (R793,805-806,809) The state's assumption is mere speculation involving non-record information. The state's "clairvoyancy" is both unwarranted and improper.

The state reviews the evidence and conclusively decides that James Mack was more culpable than Robert North. The state seems to believe that there is little doubt in the resolution of this issue. Appellant contends that the relative degree of culpability became a significant issue at Mack's trial. The only physical evidence at the scene of the crime pointed to Robert North rather than James Mack. (R558-561) Police found North's latent thumbprint on the victim's night stand drawer. (R560-561) The physical evidence is consistent with Mack's defense that Mack remained outside, while Robert North burglarized the victim's home and murdered her when she awakened. This is also consistent with the fact that the victim knew Robert North from yard work that he had performed for her in the past. (R344-355,468) The state offered no evidence that indicated that the victim knew James Mack. This evidence clearly supports the contention that Robert North was more culpable than James Mack.

If the state is so certain that the evidence supports the theory that Mack committed the murder rather than North, why is the state so intent on keeping North's life recommendation from Mack's jury? If the evidence really did support the state's theory, it seems that they would be unconcerned about this relatively innocuous item of evidence. "The lady doth protest too much, me thinks." (Shakespeare, Hamlet, Act III, Scene 2). The jury was entitled to hear this relevant evidence proffered by the defense at the penalty phase. The trial court's exclusion of that relevant evidence constitutes reversible error. Amend. VI, VIII, and XIV. U.S. Const.

POINT III

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT IN CONTRAVENTION OF APPELLANT'S RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, THE TRIAL COURT ERRED IN IMPOSING A SENTENCE OF DEATH WHICH IS NOT JUSTIFIED IN THAT IT IS BASED UPON INAPPROPRIATE AGGRAVATING CIRCUMSTANCES, MITIGATING CIRCUMSTANCES SHOULD HAVE BEEN FOUND, AND MITIGATING CIRCUMSTANCES OUTWEIGH THE AGGRAVATING CIRCUMSTANCES.

Appellant persists in his contention that the written findings of fact recited by the trial court are completely inadequate for this Court to review. This is especially true of two of the aggravating circumstances where the trial court failed to cite any facts in support thereof. The trial court states simply that the crime "was committed for pecuniary gain." (R918) Finally, the trial court simply recites that the crime was "especially wicked, evil, atrocious or cruel." (R918)

The prejudice inherent in these perfunctory findings is amplified by the state's Answer Brief. In the Answer Brief, the state contends that, "Simple analysis of the short trial transcript and relevant caselaw on the applicability of the aggravating factors at issue in light of that factual record would suffice." See Answer Brief, pp. 25-26. The state engages in such activity in its attempt to refute Appellant's argument that the murder was not especially wicked, evil, atrocious, or cruel under Section 921.141(5)(h), Florida Statutes. Rather than operating from any restriction that should have been provided by the written findings of fact prepared by the trial court, the

state simply searches the record and reiterates any evidence that it finds that would arguably support this particular aggravating circumstance. See Answer Brief, pp. 41-44.

This is precisely the type of prejudice that the Appellant contends prejudices the prosecution of this appeal. "The fourth step required by Fla. Stat. §921.141, F.S.A., is that the trial judge justifies his sentence of death in writing, to provide the opportunity for meaningful review by this Court. Discrimination or capriciousness cannot stand where reason is required, and this is an important element added for the protection of the defendant." State v. Dixon, 283 So.2d 1, 8 (1973). This important element provided by the statute adding protection for the defendant is absent in James Mack's case. In arguing that this particular aggravating circumstance applies, the state has simply searched the record and the evidence therein and speculated on what particular items of evidence that the trial court may have found credible enough to support this aggravating circumstance. Such speculation should not be permitted especially given the standard of proof (i.e. beyond a reasonable doubt) required to support the finding of an aggravating factor. Such a procedure fails to comport with constitutional standards. Amends. VIII, and XIV, U.S. Const.

POINT IV

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED BY IMPOSING DEPARTURE SENTENCES ON THE NON-CAPITAL OFFENSES WITHOUT PROVIDING WRITTEN REASONS.

Appellant concedes that this Court has specifically accepted the trial court's orally stated reason for departure as a valid basis to depart. Torres-Arboledo v. State, 524 So.2d 403 (Fla. 1988) and Hansbrough v. State, 509 So.2d 1081, 1987 (Fla. 1987). Appellant never argued otherwise in his Initial Brief. Appellant objected only to the failure of the trial court to reduce the reason to writing in contravention of State v. Jackson, 478 So.2d 1054, 1055-56 (Fla. 1985) and Rule 3.701(d)(11).

Appellee is correct in pointing out that the scoresheet contains a typewritten notation in the vicinity of the "reasons for departure" section stating, "The Capital offense of First Degree Murder is not scored." (R928) Due to the location of this particular notation, the undersigned counsel simply did not notice it. However, Appellant still contends that the notation fails to comply with Rule 3.701(d)(11). The statement has been carefully typed so as to avoid placement on the lines provided for any "reasons for departure". Neither the scoresheet nor the statement contain the signature of the trial judge. (R928) Finally, there is no indication that this statement was typed by the clerk at the trial court's direction. If that had been the case, Appellant would concede that the requirements of the rule had been met as this Court recently held in Torres-Arboledo v.

State, 524 So.2d 403 (Fla. 1988). However, such is not the case and Appellant persists in contending that the trial court failed to comply with the rules regarding sentencing guidelines.

The state's argument urging this Court to apply the harmless error doctrine in dealing with this particular argument is interesting but, nevertheless, inapplicable. The rule clearly contemplates that, if a trial court wishes to impose a departure sentence, the court must provide written reasons for departure contemporaneously with the imposition of the sentence. This requirement has been held to be mandatory in Elkins v. State, 489 So.2d 1222 (Fla. 5th DCA 1986), wherein the District Court reversed a departure sentence because the trial court did not provide his written reasons until five weeks after imposition of sentence. The majority refused to consider the sufficiency of the reasons because the court's failure to comply with the contemporaneous requirement. Thus, it appears that Appellee's suggestion that this Court apply the harmless error doctrine and review the oral reasons for departure is completely untenable.

In urging this Court to apply the harmless error doctrine, the state suggests that the proper remedy for any error that may have occurred would be simple remand for a resentencing that would involve nothing more than having the judge affix his signature to the transcript of the sentencing hearing. See Answer Brief at pp. 46-47. Appellant disagrees with the state's suggested relief. Appellant contends that the thrust of Shull v. Dugger, 515 So.2d 748 (Fla. 1987), is that the trial court is given only a single bite of the apple. In other words, the trial

court which fails to comply with all the rules concerning imposition of a departure sentence (i.e. clear and convincing reasons provided in a written order contemporaneously with the pronouncement of sentence), is not permitted a second chance to make its sentence "legal." Appellant contends that upon remand for resentencing, the trial court should be required to impose sentences within the recommended guidelines range. See e.g. Nichols v. State, 521 So.2d 372 (Fla. 2d DCA 1988).

CONCLUSION

Based upon the authority, argument and policy cited herein and in the initial brief, Appellant respectfully requests this Honorable Court grant the following relief:

As to Point I, reverse the murder conviction and death sentence and remand for a new trial;

As to Point II, vacate the death sentence and remand for imposition of a life sentence or for a new penalty phase;

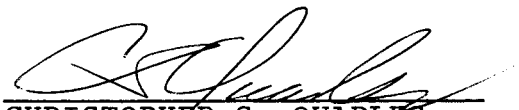
As to Point III, vacate Mack's death sentence and remand for imposition of a life sentence;

As to Point IV, remand for resentencing within the guidelines;

As to Point V, declare Florida's death penalty statute unconstitutional or remand for the imposition of a life sentence.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS
112-A Orange Avenue
Daytona Beach, Fla. 32014
904-252-3367

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 125 N. Ridgewood Avenue, fourth floor, Daytona Beach, Fla. 32014 in his basket at the Fifth District Court of Appeal and mailed to Mr. James Michael Mack, #B050813, P.O. Box 747, Starke, Fla. 32091 on this 19th day of September 1988.

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER