5-17

IN THE SUPREME COURT OF FLORIDA

THOMAS ALVIN CONNELL,]
Petitioner,]
vs.]
JERRY WADE]
Respondent]

Case No. 71,777

INITIAL BRIEF OF PETITIONER THOMAS ALVIN CONNELL

THOMAS ALVIN CONNELL, dc# 101802
Petitioner, pro se

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PRELIMINARY STATEMENT

Thomas Alvin Connell will be referred to as "Petitioner" in this brief. The State of Florida will be referred to as the State, Jerry Wade, having lawful custody of Petitioner and employed by the State was named in the original Petition for Writ of Habeas Corpus that this action originated. Reference in this brief will be to the actual time and type of hearing held. Petitioner has not had benefit of The Record and has only prior briefs and limited transcripts in his possession to prepare this brief.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information in Lee County Circuit Court with Sexual Battery, Florida Statute §794.011(4)(1983) and Lewd and Lascivious Assault, Florida Statute § 800.04(1983). In the information, the alleged crimes occurred sometime between February 1,1983 and July 31,1983.

Petitioner had a jury trial and on February 2,1984 was found guilty of both counts(see App.1). The trial judge, Thomas Reese prior to sentencing ordered a new trial,see App.3 . The State appealled this order, State vs Connell, 478 So2d.1176(Fla.2 DCA 1985). District Court reversed the order of the trial court and Petitioner was remanded for sentencing. Petitioner was sentenced on February 13,1986. Petitioner affirmatively elected to be sentenced pursuant to the guidelines. The scoresheet, which had been prepared for Petitioner's original sentencing to be held in March,1984 was presented to the trial judge. The scoresheet was erroneous because Florida Statute § 800.04(1983) was scored as additional first degree felony, it is only a second. The corrected scoresheet reflected a total santion of 4½ to 5½ year range, the trial judge agreed to this computation. Petitioner requested that this scoresheet be utilized. Sentencing Guidelines were revised since the original scoresheet had been prepared and the punishment had been increased, In re Rules of Criminal

Procedure, (Sentencing Guidelines) 451 So2d.824(Fla.1984).

The trial judge agreed and acknowledged that the earlier scoresheet would apply but then cited four reasons and sentenced Petitioner above **both** recommended ranges , Petitioner appealed. In Connell vs State, 502 So2d.1272(Fla.2 DCA 1987), the reasons stated for departure were held invalid and the Petitioner was remanded for resentencing within the guidelines per instruction.

Petitioner was resentenced on April 8,1987 and was sentenced using the guidelines in effect at that time, Petitioner appealed this sentence. The District Court affirmed the sentence, citing that under the authority of State vs Jackson, 478 So2d.1054 (Fla.1985), the guidelines in effect at the time of sentencing controlled. Petitioner filed a Petition for Writ of Habeas Corpus, **pro se and** retained counsel filed a Petition for Writ of Habeas Corpus both to the Second District. Petitioner then filed a pro se Petition for Writ of Habeas Corpus to this Honorable Court after relief was denied in the Appellant Court. This Court granted jurisdiction and this Brief is as per order of April 12,1988.

SUMMARY OF ARGUMENT

Petitioner's alleged crimes that convictions were obtained, were committed prior to the effective date of the Sentencing Guidelines, Florida Statute § 921.001(1983). Petitioner did affirmatively select as provided in the above statute subsection (4)(a) to be sentenced within the guidelines. Except for the State's breach of the Florida rules of criminal procedure(1983), Rule 3,220, the Petitioner would have been sentenced with the original guidelines enacted, In re Rules of Criminal Procedure, 439 So2d.848(Fla.1983). But for the State appealing the trial court's Order for New Trial and Petitioner defending that order and then defending against impermissable reasons stated to enhance an illegal sentence, Petitioner after relief being denied filed for relief from this Honorable Court and seeking to review prior decisions that have invalidated this Court's Standards as they should be applied. Supreme Court opinions are not to be amended by District Courts but are to be followed unless the Supreme Court makes the change.

ARGUMENT

WHETHER, THE TRIAL COURT ERRED BY USING THE GUIDELINE IN EFFECT AT THE TIME OF RESENTENCING RATHER THAN THE GUIDELINE IN EFFECT AT THE TIME OF ORIGINAL SENTENCING AND SHOULD PETITIONER BE PENALIZED FOR APPEALS ?

The issue in this case is whether the trial court utilized the correct scoresheet in the resentencing of Petitioner after remand from the District Court of Appeal, see,Connell vs State, 502 So2d.1272(Fla.2 DCA 1987) and Connell vs State, 517 So2d. 77(Fla.2 DCA 1987). The Second District Court of Appeal affirmed the application of the revised guideline scoresheet used to resentence Petitioner disregarding the argument of the EX-POST FACTO argument presented by counsel for Petitioner. This Court should be made aware of the fact that there is a co-defendant who was found guilty on January 30,1984 and was sentenced using a scoresheet prepared and **scored** under Florida Statute § 921.001 (1983), In re Rules of Criminal Procedure, 439 So2d.848(Fla.1983). The Petitioner was originally set to be sentenced in March,1984 but this date was postponed until April 3,1984. Petitioner was present in court for sentencing at this time. Defense Counsel at this time presented to the trial court an affidavit made by telephone to a court reporter by the co-defendant admitting to perjury in the trial of Petitioner, the trial judge declined to sentence Petitioner at this time and after request by the Counsel for Defense permitted that additional questions could

be asked of the victim to ascertain if perjury was committed during the trial of Petitioner. Sentencing was continued until May 1,1984, this was a supplement to the record requested by Petitioner's Appellant Counsel, PETER D. RINGSMUTH in Appeal Case No.87-1312,(see App.2). Trial Court at this hearing was made aware that the State had failed to comply with the Rules of Discovery, Rule 3.220, Fla.R.Cr.P.(1983). The trial court continued the sentencing until a POST-TRIAL RICHARDSON HEARING could be held to determine if the Petitioner had suffered prejudice. This Post-trial Richardson was held on May 18,1984,[a copy of the hearing is contained in a Petition for Writ of Habeas Corpus filed by Counsel for Petitioner to the Second District Court of Appeal(Case No.87-2723), this Petition was denied without explaination and without a hearing on the issues presented,see Connell vs Wade, 514 So2d.62(Fla.2 DCA 1987)]. After the trial court held the Post-trial Richardson Hearing and heard argument from the Defense and from the State, it was determined by the trial judge that the Petitioner was prejudiced by the State's failure to comply with the Rules of Discovery and a New Trial was ordered on September 12,1984(see App.3). The State filed a timely appeal to the Second District Court of Appeal of Florida seeking review of the Order of the Trial Judge Granting a New Trial,see State vs Connell, 478 So2d.1176 (Fla.2 DCA 1985), the Second District Court of Appeal invalidated prior and subsequent rulings of the Florida Supreme Court and

directly conflicted with the same District Court of Appeal opinion rendered on the same issue on the same day, Cf. Marrow vs State, 483 So2d.17(Fla.2 DCA 1985). Since the Appeal was taken by the State, the Petitioner had no choice but to defend the issue as presented by the State and should not be held responsible for the delay in sentencing, all delays were a result of the actions of the State, not the actions of Petitioner who was only exercising his rights as guaranteed by the Constitutions of the United States and of Florida. After the adverse ruling of the Second District Court of Appeal in Case No.84-2092, the trial court sentenced the Petitioner on February 13,1986. The trial court acknowleged that the Petitioner's scoresheet that was before the Court was in error as that the additional offense was scored as a first degree felony when it is but a second degree felony, the trial court further agreed that the Sentencing Guidelines called for a sentence of four and one half(4½) to five and one half(5½) year range and then cited four(4) reasons for departing from the presumptive guideline range and sentenced Petitioner to twenty(20) years for count one and five(5) years for count two to be served consecutive to count one. Petitioner filed a timely Appeal seeking review of the reasons stated for departure, see Connell vs State, 502 So2d.1272(Fla.2 DCA 1987), the Second District Court of Appeal invalidated all four(4) reasons for departure and remanded Petitioner to the trial court to be sentenced within the guide-

lines. Petitioner was resentenced on April 8,1987 by the Trial Court utilizing the guidelines in effect at the time of re-sentencing to concurrent terms of imprisonment of nine(9) years for each count to be served concurrently. Counsel for Petitioner filed an Appeal to the Second District Court of Appeal citing that the EX POST FACTO CLAUSE of the Constitution protected the Petitioner but this argument was disregarded by the District Court of Appeal, Second District Of Florida, see Connell vs State, 517 So2d.77(Fla.2 DCA 1987). During the time that Petitioner's Direct Appeal was pending(Case No.87-1312), the United States Supreme Court issued an unanimous opinion, Miller vs Florida, 107 S.Ct.2446(1987). The Second District Court of Appeal in the opinion rendered in Case No.87-1312 cited that under the authority of State vs Jackson 478 So2d. 1054(Fla.1985), the applicable guidelines are those in effect at the time of sentencing. The United States Supreme Court was clear in the opinion of Miller, Supra.,as the application of Jackson was a violation of the EX POST FACTO CLAUSE of the Constitution. Miller, stated that the change increased the punishment that was imposed for a particular offense, the U.S. Supreme Court reversed citing that it did violate the EX POST FACTO CLAUSE of the Constitution as the notice did not let Defendants know what the change would be only that the Guidelines were subject to periodic review, Miller at p.2448.

Miller, Supra. went to explain the legislative intent of the

Sentencing Guidelines as enacted by Florida Statute § 921.001 (1983). Florida Statute § 921.001(1983)(4)(a) states;

> Upon recommendation of a plan by the Commission, The Supreme Court shall develop by September 1,1983, statewide sentencing guidelines to provide trial court judges with factors to consider and utilize in determining the presumptively appropriate sentences in criminal cases. The statewide sentencing guidelines shall be implemented by October 1,1983, unless the Legislature affirmatively delays the implementation of such guidelines prior to October 1,1983. The guidelines shall be applied to all felonies, except capital felonies, committed on or after October 1,1983, and to all felonies, except capital felonies and life felonies, committed prior to October 1,1983, for which sentencing occurs after such date when the Defendant affirmatively selects to be sentenced pursuant to the provisions of this act. (Emphasis added)

The U.S. Supreme Court held that the provisions of Florida Statute § 921.001(1983) as enacted by the Legislature of Florida has the force and effect of enacted law and that the Florida Sentencing Guidelines were not to be confused with "Guidepost", Miller at 2448. The Petitioner invoked the right to be sentenced as provided by the above cited staute, this was acknowledged by the trial court in the Sentencing Hearing held before the trial court on February 13,1986, this record was furnished to the Second District Court of Appeal(Case No.87-1312) identified as (SR-5) in that Appeal. The Petitioner in his Petition for Writ of Habeas Corpus filed to this Honorable Court,Case No.

71.777 cited from Adams vs Wainwright, 512 F.Supp.948(N.D.Fla. 1981) stating in support of relief at p.953

> The "analysis as to liberty parallels the accepted due process analysis as to property." Wolff vs McDonnell, 418 US 539, 557, 94 S.Ct 2963,2975, 41 L.Ed2d.935(1974). "The touch-stone of due process is protection of the individual against the arbitrary action of government." Id. at 558, 94 S.Ct.at 2975 citing Dent vs West Viginia, 129 US 114, 123, 9 S.Ct. 231,233, 32 L.Ed2d.623(1889). Once the state imposes limitations on its own discretion and requires that a specific standard prevail for decision making, it creates a liberty interest. This is true "regardless of whether limits stem from statute, rule or regulation".(cites ommitted) (Emphasis added)

Once Florida enacted through Legislation the Sentencing Guidelines, Florida Statute § 921.001(1983), it created a liberty interest. This is evident by the fact that the co-defendant was sentenced by the guidelines in effect at that time. Not at issue, the co-defendant's sentence was not in accordance with Rule 3.701(d)(12)(1983), the co-defendant's sentence was four(4) years imprisonment to be followed by ten (10) years probation, (see App. 4). Petitioner believes that he provided support to his position that his sentence of nine(9) years is not in accordance with the opinion rendered in Miller, Supra., the Petitioner affirmatively requested to be sentenced within the guidelines as provided in Florida Statute § 921. 001(1983). The opinion rendered in Miller, Supra held that

Florida Statute § 921.001(1983) was valid and has the force and effect of law. Petitioner in accordance with Florida Statute § 921.001(4)(a)(1983) since his alleged crimes ocurred prior to the effective date as permitted by the above statute requested to be sentenced by the guidelines.

Although not the principle issue before this Honorable Court, this court may consider the entire cause once jurisdiction is accepted; Cf. Andersen vs State,274 So2d.228(Fla.1973)

> Once the Supreme Court has jurisdiction it may, if it finds necessary to do so, consider any item that may effect the case. Citing Trushin vs State,425 So2d.1126(Fla. 1982),reh.denied Feb.8,1983)(Emphasis added)
>
> If conflict as to question of law appears and Supreme Court acquires jurisdiction,it then proceeds to consider the entire cause on its merits. Citing Bould vs Touchette, 349 So2d.1181(Fla.1977)(Emphasis added)

The delays that were incurred were a direct result of the actions of the State. Petitioner was represented by the Office of the Public Defender, Fort Myers, Florida during the initial stages of the trial proceedings up until early November when private counsel was retained by the family of Petitioner to complete the preparation of the defense of the charges alleged. Petitioner is not attempting to reliligate this cause but because the issues intervolve with one to the other, Petitioner respectfully requests this Honorable Court to only consider the pyramiding effect these issues had on the ability of the Defense Counsel to properly prepare a defense for the charges.

The Petitioner's trial was concluded of February 2,1984, this can be found in the record numerous times. Post trial, the co-defendant acknowledges to Defense Counsel that during the trial of Petitioner, she perjured her testimony due to threats and coercion by the Prosecuting Authorities, this leads to a delay in the sentencing procedure, this ocurred at the April 3,1984 sentencing. The trial judge permits that additional questions may be asked of the victim only after the Defense Counsel and State Prosecutor meet and discuss the questions to be asked of the victim, subject to approval of the trial judge. During the meeting between the Counsels to determine the number and type of questions to be asked of the victim, it became apparent to the Prosecutor that a statement taken by the prior Prosecutor had not been disclosed to the Defense Counsel,citing from Post Trial Richardson Hearing, p.18, beginning at line 15 thru 22

Q. When did you first become aware that these packages weren't, as you said, numbered for discovery?

A. Upon conversation with Mr. Ringsmuth in which he had indicated that he wanted to interview Karen Totherow again, and we had a conference to determine what kind and type of questions he intended to ask, during our conversations it became clear to me that he had never received a statement that had been taken in our office near the end of 1983.

Petitioner directs this court's attention to the fact that

the statement that is referred to in this answer was taken on September 15,1983 and a "DEMAND FOR DISCOVERY" was filed by the Public Defender on September 22,1983,(see App.5),this demand was answered by the Prosecutor on September 26,1983(see App.6). A second request was filed by retained counsel Dec.22,1983 (see App.7) , a verbal request was made in open court on December 23, 1983, the response was the same as before, the state has rendered all DISCOVERY to the Defense Counsel. During the Post Trial Richardson Hearing the Prosecutor(Burns) was questioned by Defense Counsel Ringsmuth about the Demands for Discovery and the responsibility of the Prosecutor(se p.13,lines 11 thru 20)

Q. Did you go to the file and look in the file and see whether or not any additional information had come in that you had not numbered?

A. No.

Q. You knew that additional information had been done on the case. As a matter of fact, you knew that you did it?

A. That's correct

Q. And when that demand for discovery came in, you didn't even go to the file and check, did you?

A. No.

The trial court in the case at bar did hold a full Richardson Hearing as defined in Richardson vs State, 246 So2d.771(Fla.1971). This Court has explained and addressed the issue of the State failing to comply with Rule 3.220, Fla.R.Cr.P.and the answer

and explaination have been consistant, see Cumbie vs State, 345 So2d.1061(Fla.1977), Wilcox vs State, 367 So2d.1020(Fla.1979), Smith vs State, 500 So2d.125(Fla.1986) and United States vs Bagley, 105 S.Ct.3375(1985), this court went to explain that the purpose of a "Richardson Hearing" is to ferret out procedural rather than substantive prejudice. the trial judge must first decide whether the discovery violation prevented defendant from properly preparing for trial, Cf.May 18, 1984 Hearing at p.28 starting at line 24 thru to p.30,line20: Defense Counsel's explaining being prejudiced in preparing for trial:

Mr. Ringsmuth: I'll take page 112 of the State Attorney's Office. About midway down the page the witness in this case is Karen Totherow who was the alleged victim in the offense, indicated that the sexual intercourse took place "for two or three seconds." I submit to the court that had defense counsel been aware of this statement and had that available when each of the defense counsel were taking each of their depositions, this could have been able to, in response to her answers on all those depositions, have drawn her attention to this. Because as the court will remember, in those depositions she didn't even know if he had sexual intercourse or not and by the time it got to trial she knew full well and it was a much longer duration.(Emphasis Added)

So not only is the court considering this as perhaps impeachment at the trial, we could have said, "but didn't you say

earlier," and impeached the witness. At the time that we took her deposition, we could have shown her this and perhaps her ultimate testimony would have been different from what it was. Because, you see, it's our contention that sometimes people, when they testify, don't testify truthfully, and that if we are prepared to confront them with prior statements at the time that they are going through their testimony, it can have an ultimate affect on what is the final solution.

And to deny us at this time we are taking those depositions has that effect. This is different from what she said. And we were denied to have this right when we were discovering the case.

That could of led to other discovery questions. Questions to people she talked to, such as Karen Scott, Deputy Macomber, Deputy Smith, -- "Well, didn't she tell you it was only two or three seconds in length." But we weren't provided with this, we didn't know it, until a month or so after the trial.

So I would submit to this court that's just an example.

The Court: You contend that's something more than impeaching them or her with a prior inconsistant statement?

Mr. Ringsmuth: Correct. That's precisely what I'm saying. I'm saying that that goes to the whole concept of preparing a criminal case for trial. That's why we are entitled to this because it's different from what she said.

The trial judge made a full inquiry and after three(3) months

review decided the Defense was prejudiced by the State's failure to comply with "Discovery Rules". This court expressly held in Cumbie, "[a] review of the cold record is not adequate for a trial judge's determined inquiry into all aspects of the state's breach of rules." 345 So2d.at 1062 citing from Smith, 500 So2d. at 126 The opinion rendered by the District Court though not directly at issue cannot stand as this opinion invalidates the above cited case laws, the same principles are involved. The United States Supreme Court in United States vs Bagley, 105 S.Ct.3375(1985) impeachment material was explained as;

> The Court of Appeals treated impeachment evidence as constitutionally different from exculpatory evidence. According to that court, failure to disclose impeachment evidence is "even more egregious" than failure to disclose exculpatory evidence "because it threatens the defendant's right to confront adverse witnesses." 719 F.2d.at 1464. Relying on Davis vs Alaska, 415 US 308, 94 S. Ct.1105, 39 L.Ed2d.347(1974), the Court of Appeals held that the Government's failure to disclose requested impeachment evidence that the defense could use to conduct an effective cross-examination of important prosecution witness constitutes"' constitutional error of the first magnitude'" requiring automatic reversal. 719 F.2d.at 1464 (quoting Davis vs Alaska,supra, 415 U.S. at 318, 94 S.Ct.at 1111).

Petitioner submits that once this court aquires jurisdiction, it may, if it deems necessary correct any errors again refering to Andersen vs State, 274 So2d.228(Fla.1973) cert.denied 94 S.Ct.

150, 414 US.879, 38 L.Ed2d.124(1973),[F.S.A.Const.art.5 § 3(b)(3)]. The opinion the District Court of Appeal opinioned in State vs Connell, 478 So2d.1176(Fla.2 DCA 1985) cannot prevail as this would invalidate rulings by the Supreme Court on the same issues and needlessly burden this court with appeals citing the above forementioned case.

Petitioner has brought the issues before this Honorable Court and substantiated his cause using the transcripts that are available to him and supported his position with the case law that is applicable and appropriate. The District Court in the opinioned decision in State vs Connell, 478 So2d.1176 stated that:

> First, none of the information contained in the September 15 deposition was excupatory.
>
> Second, the information would not have materially assisited defendant in the preparation of his defense. To the contrary, most of the statements given by defendant's two stepdaughters on September 15 were inculpatory of defendant.....Moreover, the defendant's stepdaughters' statements contained only insignificant inconsistencies from their previous statements. Thus, the discovery error did not in any way preclude the defendant from receiving a fair and impartial trial. (cites ommitted)

The record of the Post Trial Richardson Hearing clearly doesn't support this statement, it is evident from the fore cited transcript, this withheld material would have made quite a difference to the preparation of the defense. Petitioner does not

know how the issues were presented to the Appellant Court, the Appellate Counsel did not have any communication with the Petitioner during the appeal. Petitioner tried to communicate with counsel but received no reply. Because of restrictions imposed by the trial judge on travel, Petitioner could not travel to Appellant Counsel's place of employment. As well, the end of the opinion states;

> Therefore, the prosecutor was not guilty of misconduct. Moreover, the record reveals that defendant's guilt is supported by substantial competent evidence....

Petitioner being involved in all phases of pre-trial and trial, and post trial statements would like to have copies of the evidence Appeal Court reviewed, the hearing before the trial judge does not support competent evidence. Defense counsel stated that the pre-trial statemnets by the victim stated "She didn't know and was not sure if the crime did occur" except the one statement that was withheld, that statement said "it lasted two(2) or three(3) seconds". This Court addressed the issue of Canon 7 of our Code of Professional Responsibility in Cumbie,Supra

> Ethical Consideration 7-13 (partial)
> "The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely convict.... With respect to evidence and witnesses, the prosecutor has the responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused,

> mitigate the degree of the offense, or reduce the punishment."

This same standard as stated by this Honorable Court can be found in Bagley, Supra., Justice WHITE, THE CHIEF JUSTICE, Justice REHQUIST join, concurring in part and concurring in the judgement stated at p.3391

> Thus, for the purposes of 'Brady', the prosecutor must abandon his role as advocate and pore through his files, as adjectively as possible to identify the material that could undermine his case....

The Post Trial Richardson Hearing shows that the first Prosecutor failed to review his file but the second Prosecutor did not think it was important enough until an admission of PERJURY had been made by the State's key witness, the codefendant of the case. The responsibilities are clear and it is equally clear that the policies were not followed by either prosecutor, Petitioner has been denied his basic Constitutional Right to a fair and impartial trial and a District Court disregards and rejects the standards set by other courts and even conflicts with its own District on the same issue, the same day by three other justices. Petitioner requests this court to correct this error.

CONCLUSION

Petitioner will address the second or supporting issue that is contained in the foregoing argument, that is the "Brady", "Richardson Violation".

The Petitioner's basic Rights as guaranteed by both the Constitutions of Florida and the United States have been violated to such an extent that the wrongs incurred cannot be cured by giving Petitioner a new trial. The seed of prejudice and deceit has been firmly planted in the minds of the victim and other witnesses. This is not an imaginary statement, it is reflected throughout pre-trial testimony and depositions as well in post trial statemnts. Petitioner attempted to elicit this very issue during trial but the answer was the same "I don't remember", I don't recall". Pre trial depositions and hearing will support this.

This Court has a various remedies that can be applied to Discovery Violations, the least severe being the granting of a new trial. The trial judge listened and evaluated this violation and granted a new trial, the District Court rejected this reasoning. A new trial will not remove the coercion, the prejudice, nor correct the wrongs that the Petitioner has suffered because his Basic Rights were violated, he was denied a fair and impartial trial.

Petitioner would request this Court to consider the most

severe remedy, that being DISCHARGE PETITIONER, REVERSE THE CONVICTIONS and DISMISS THE INFORMATION.

Petitioner submits to this court if the 'Discovery' violation is not considered by this Court that his sentence as imposed by the trial court and affirmed by the Appellant Court be vacated and that he be sentenced in accordance with the opinion of Miller and has supported the relief requested with the application of Adams to a term not to exceed five and one half years imprisonment which the Petitioner has already satisfied.

Respectfully Submitted,

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SWORN AND SUBSCRIBED TO BEFORE me the undersigned authority on this 22nd day of April, 1988.

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. DEC. 3,1990
BONDED THRU GENERAL INS. UND.

NOTARY PUBLIC

TERRY R. PAGE NOTARY PUBLIC STATE OF FLORIDA

Terry R. Page
Notary Public
State of Florida
County of Hendry

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing INITIAL BRIEF OF PETITIONER with/ Appendix has been furnished by U.S.MAIL to GARY O. WELCH, Assistant Attorney General, Department of Legal Affairs, Park Trammell Building, Suite 804, 1313 Tampa Street, Tampa, Florida 33602 on htis 22 day of April, 1988.

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