IN THE SUPREME COURT OF FLORIDA

CASE NO. **73,856**

PEDRO MEDINA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT COURT, IN AND FOR ORANGE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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INTRODUCTIO

The State argues that certain of Mr. Medina's claims, those alleging ineffective assistance of counsel, raised in the Rule **3.850** motion are somehow barred by the common law rule of laches. The State asserts that laches requires a finding of inordinate delay on the part of the person seeking relief, and prejudice to the State (Answer Brief of Appellee, p. *8*, n.1). Mr. Medina filed his Motion to Vacate within the two year deadline set forth in Fla. R. Crim. P. **3.850**. The lower court expressly ruled that the laches doctrine did not apply: witnesses were available to testify and there was no unreasonable delay by Mr. Medina.[1] Counsel for Mr. Medina, like the lower court, cannot understand why the State would even assert that a timely filing of a Rule **3.850** motion within the statutory deadline constitutes "inordinate delay." Further, the unfortunate death of trial defense counsel Warren H. Edwards was, if anything, more prejudicial to the defense than to the State, as the burden rests on Mr. Medina in these proceedings to show the denial of effective assistance of counsel. (Co-counsel, Ms. Rodriguez, was

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[1]The lower court believed the State's laches contentions to be so devoid of merit as to not even warrant an evidentiary hearing. If this Honorable Court gives any credence to the State's laches argument, this case plainly requires an evidentiary hearing on that question, as the State bears the burden of proving, through evidence, that there was an unreasonable delay in this case and that the State was prejudiced.

available, prepared an affidavit concerning the representation of Mr. Medina which was introduced below, and testified at the hearing.) Mr. Edwards' death by no means prejudiced the State. The laches argument is absolutely devoid of merit.

ARGUMENT I

BECAUSE OF THE STATE'S WITHHOLDING OF EVIDENCE IN VIOLATION OF BRADY V. MARYLAND AND ITS PROGENY AND/OR BECAUSE OF DEFENSE COUNSEL'S UNREASONABLE AND PREJUDICIAL FAILURE TO INVESTIGATE, IMPORTANT, MATERIAL, EXCULPATORY AND IMPEACHMENT EVIDENCE WAS NOT HEARD AT PEDRO MEDINA'S TRIAL, IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

A. THE SERRATED KNIFE

The State contends that since the trial prosecutor denied knowledge of the serrated knife, he was under no duty to disclose the knife. The case law refutes this contention. The serrated knife was given to the medical examiner, and catalogued in his files. It was brought from the victim's house to the medical examiner by the lead detective on the case (H. 770). Neither the medical examiner nor the detective disclosed these facts at their deposition, and no one told the defense.

Evidence favorable to the accused must be disclosed, whether in the control of the prosecutor, or those under his authority. See Aranso v. State, 467 So. 2d 692 (Fla. 1985), subsequent history 497 So. 2d 1191 (Fla. 1986); Williams v. Griswold, 743 F.2d 1533 (11th Cir. 1984); Georgia v. Freeman, 599 F.2d 65 (5th Cir. 1979); Schneider v. Estelle, 552 F.2d 593 (5th Cir. 1977);

United States v. Antone, 603 F.2d 566 (5th Cir. 1979); Giglio v. United States, 405 U.S. 150 (1972): All holding that knowledge on the part of law enforcement is imputed to the trial prosecutor -- this Court, every federal court of appeals, and the United States Supreme Court are all consistent in this regard. Here, the medical examiner (a state agent) and the lead detective knew about the knife. These facts are not open to dispute.

The State concedes that defense counsel never learned of the existence of the serrated knife (Answer Brief of Appellee, p. 12), but argues that the knife was not relevant. However, in this wholly circumstantial case, the key link between Mr. Medina and the murder was a buck knife purportedly found with Mr. Medina, and touted before the jury as the murder weapon.[2] Evidence that the police were not certain that the buck knife found with Mr. Medina was the murder weapon, and that they were investigating another knife, unrelated to Mr. Medina, would have been critical to a fair and reliable jury determination. No one disclosed it. This failure to disclose was plainly prejudicial error.

B. THE "WILLIAMS" RULE INCIDENT

Once again the State argues that the trial prosecutor was unaware of Mr. White's activities during the incident where Mr.

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[2]This, even though no blood was established as being on the knife connecting it to the victim.

Medina allegedly stabbed White, and therefore it was not error to fail to disclose this information to the defense.

However, the Victim Crime Compensation Records themselves, which contain the very information that the stabbing involved an incident over marijuana rather than over the car, indicates that that the information was provided to the state attorney. Further, defense counsel filed a motion to have Mr. White's prior record turned over, and repeatedly tried to depose Mr. White prior to trial, but was met time and again with resistance by the State and Mr. White. The record also discloses that Mr. Whit did not provide this information at his deposition, nor was it included in the defense attorneys' trial files. Neither White nor the State disclosed it, although official records demonstrated that the State had it.[3]

While the Appellee is correct that Mr. White was never charged with possession of contraband at the time of the stabbing incident, that is a far cry from arguing, as the Appellee does, that the prosecutor "had no leverage on a non-existent offense and White's probation may never have been revoked" (Answer Brief of Appellee, p. 14). The mere fact that a charge had not <u>yet</u> been brought did not make Mr. White's conduct any less unlawful; clearly the State could have brought charges any time and could

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[3]If the prosecutor chose not to read the records, that is no excuse.

as easily have revoked Mr. White's probation. White's bias and interest are plain. But the jury never learned it, because it was not disclosed, notwithstanding the importance of this witness to the State's wholly circumstantial case.

That these matters were hanging over Mr. White's head at the time of his testimony was plainly relevant, material impeachment evidence that the defense was entitled to know, and to argue to the jury. This is even more apparent in light of the importance that the jurors placed on Mr. White's testimony: one juror in fact stated on the record that he could not go forward, because he was no longer impartial, after hearing White's testimony; the other jurors were never questioned on this point. The information about the alleged stabbing was requested by the defense, and should have been disclosed.

Finally, the State argues that any reference to White's offenses would not have been admissible. It is beyond argument that motive or bias to testify favorably for the State is admissible. The avoidance of being charged with a crime or of having one's probation revoked constitutes bias or motive for testimony favorable to the State. The State's arguments are devoid of merit. Relief is proper.

ARGUMENT II

MR. MEDINA WAS DENIED A MEANINGFUL AND INDIVIDUALIZED CAPITAL SENTENCING DETERMINATION BECAUSE OF COUNSEL'S UNREASONABLE FAILURE TO INVESTIGATE, AND THE RESULTING FAILURE TO PRESENT COMPELLING AND AVAILABLE MITIGATING EVIDENCE DENIED MR. MEDINA HIS RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS.

A. THE VICTIM'S DAUGHTERS

Lindi James, one of the daughters of the victim, testified at the 3.850 evidentiary hearing that she did not want Pedro Medina to be executed because of her knowledge of him, his character, his child-like nature, and other facts. Both of the victim's daughters executed affidavits on this question, which were introduced at the evidentiary hearing. Both daughters would have willingly testified for Mr. Medina at the penalty phase. Defense counsel deposed them; without a tactic, defense counsel never called them.

In its brief, the State misleadingly paraphrased Lindi's testimony to insinuate that at Mr. Medina's trial Lindi was in favor of his execution but that now her opinion had changed (Answer Brief of Appellee, p. 16). This is **not** accurate. Contrary to the State's representation, Ms. James' testimony (and both daughters' affidavits) was that she would have testified for Mr. Medina at the trial. Lindi honestly acknowledged that after the offense she was angry and wanted justice, but that she still would have testified willingly, and presented the mitigating facts she knew, if only defense counsel had asked her (H. 380).

She never told defense counsel she was angry. She would have testified because of her knowledge of who Pedro Medina was and because "it just wasn't clear that it was definitely the person that did it... . -- how can you justify executing somebody for when there was that doubt" (H. 379). But her motives for testifying are not at issue, and neither is the fact that she was angry after the offense. The bottom line is that she would have testified if she had been asked, and would have willingly provided important mitigating facts, but defense counsel (who knew that the victim, her daughters, and Mr. Medina were close) never even bothered to talk to her and her sister about testifying.

Lingering or residual doubt has been discounted as a mitigating factor by this Court. But that is far from all that the victim's daughters would have testified about. Here, the victim's daughters would have asked the jury to spare Mr. Medina's life, and provided mitigating facts about Mr. Medina, his background, and his character to support her testimony.[4] This Court has already held that testimony by a victim's family member that she would prefer the defendant not be sentenced to

[4] If a defendant's sister's testimony on these very issues is classic mitigation, as the courts have held, see Jones v. Dugger, 867 F.2d 1277 (11th Cir. 1989), then certainly such testimony from the victim's daughters is plainly admissible and doubly mitigating.

death is evidence in mitigation. Elovd v. State, 497 So. 2d 1211, 1213-15 (Fla. 1986). Here, the victim's daughters would have gone much further than that -- they would have provided mitigating facts based on what they knew first hand. There can be no question about the tremendous mitigating value of the victim's daughters' testimony in this circumstantial case. Trial counsel knew that the daughters and Mr. Medina were close, but without a tactic or strategy, never even took step one to investigate their accounts or call them to the stand.

Now, on appeal, the State argues for the first time that defense counsel's failure to acquire this information should be overlooked and excused because Lindi James responded emotionally during questioning at trial. The proper time for investigation at a capital trial is in advance of the actual trial or sentencing. Ms. Rodreguez, defense counsel, testified that she did not even begin preparing for the penalty phase until after the conclusion of the guilt phase (H. 516). This was much too late. Important mitigation was never elicited in this case because the defense's investigation was woefully inadequate.

More to the point, however, defense counsel never testified at the hearing that the fact that Lindi was emotional at the trial was a tactical (or any kind of) reason for not calling the two victim's daughters. Defense counsel testified that there was no tactic behind her failure to call them, not even the after-the-fact tactic the State now ascribes to counsel, because

counsel never even thought about it. She should have called them. Indeed, Lindi's emotional state would have accrued to Mr. Medina's advantage: as she did at the hearing, Lindi and her sister would have testified emotionally for Mr. Medina, asking the jury to spare his life (and supporting that request with first-hand facts) at the penalty phase.

The State nevertheless argues that counsel's failure to call Lindi and Arnita James was a tactical decision which should not be second-guessed in hindsight (Answer Brief of Appellee, p. 18), citing to Mr. Maslanik's testimony, as an expert attorney witness at the evidentiary hearing that he would not have **"directly"** interviewed the daughters. The State's presentation in this regard is misleading. Mr. Maslanik testified that he himself would not have **"directly"** gone to the daughters, but that <u>there is no question</u> that (given what they knew about Mr. Medina) their accounts should have been pursued. Mr. Maslanik testified that he would have someone other than himself (e.g., a friend or family member) make the first **"direct"** contact with the daughters. There is a world of a difference between what Mr. Maslanik said (that there is no question that the victim's daughters' testimony should have been presented and that <u>he</u> would have pursued the first contact with them gently, through family members) and what the State says in its brief. Here, trial defense counsel did not even take step one. As counsel's testimony at the hearing shows, there was neither a tactical nor

any other reason for her omission. Mr. Maslanik testified that there is no question that the daughters should have been called, and that defense counsel had a duty to pursue them even if the first contact was not "direct" (H. 604). Moreover, the State fails to understand that there cannot be a tactical decision without adequate investigation. Defense counsel never investigated this critical mitigation, and thus could not have had a tactic for failing to call Arnita and Lindi James at the penalty phase. The State's efforts to ascribe after-the-fact tactics to counsel's omission do not hold up.

B. BACKGROUND INFORMATION FROM CUBA

The State is quick to seize upon Ms. Rodriguez's testimony at the hearing that she wanted to de-emphasize Mr. Medina's having come to the United States from Cuba during the Mariel boat lift. In so doing, the State ignores the record. Far from de-emphasizing Mr. Medina's Cuban background, Ms. Rodriguez argued it and presented some evidence about it at the original trial proceedings (H. 574). Any testimony by Ms. Rodriguez that she tactically avoided this area of mitigation due to anti-Cuban sentiment is simply not consistent with what she did; after-the-fact rationalizations by trial counsel do not undo a claim of ineffective assistance, as the United States and Florida Supreme Courts have held. See Kimmelman v. Morrison, 477 U.S. 365 (1986), Stevens v. State, 552 So. 2d 1082 (Fla. 1989).

The State's assertion that it would have been futile to receive information from Cuba when it was not possible to bring live witnesses to this country to testify is also grossly inaccurate (Answer Brief of Appellee, p. 20). The Appellee is fully aware (or should be) that hearsay is admissible in the penalty phase when offered by the defendant, or even by the State. See Fla. Stat. section 921.141 (all relevant evidence to aggravating and mitigating factors is admissible, even if otherwise precluded by evidentiary rules at trial). Here, affidavits, letters, records, and other documentary evidence from Cuba was available. Without a tactic or strategy, counsel failed to pursue and present it notwithstanding the fact that counsel knew full well that Mr. Medina was not from this country, and that development of evidence from Cuba was the only way to present his history to the jury.

C. MENTAL HEALTH AND RELATED ISSUES

The lead attorney for the penalty phase never talked to the mental health experts who evaluated Mr. Medina. These experts were never asked to evaluate Mr. Medina concerning nonstatutory mental health mitigation, and, despite the fact that a confidential mental health evaluation could have been requested, never requested an evaluation with regard to the penalty phase. Instead, defense counsel relied on an unlicensed jail psychologist who opined that Mr. Medina was "psychotic" (H. 513-14). Counsel nevertheless still did not pursue mental health

issues. This is not reasonable, and it is not effective assistance of counsel.

Despite the assertion by the Appellee that "[t]he experts appointed . . . specifically noted the lack of mitigating evidence" (Answer Brief of Appellee, p. 24), the reports of Drs. Wilder and Gonzales make no reference to nonstatutory mental health mitigation. They were never asked about it, although the evidence was abundant. Further, these experts were never called to testify, and, as noted above, defense counsel stated that she never discussed mental health mitigation with them at all.

The Appellee also suggests that it was effective for defense counsel to fail to introduce mental health mitigation because "[e]very indication is that Medina wanted trial counsel to argue he was not crazy . . . . and he told his attorney how to handle his case" (Answer Brief of Appellee, p. 26). First, there is no such evidence in this record. Second, there are some decisions which are ultimately left to a criminal client to make, such as whether to plead guilty, or whether to testify at his/her trial. Other decisions, however, fall to the constitutionally guaranteed effective advocate for decision. The decision of whether to develop mental health mitigating evidence clearly rests with the attorney, not the client. Even when the client is involved in the decision, the client needs to be properly informed -- something that requires reasonable preparation by trial counsel in the first instance. Here, defense counsel talked to a witness

who said her client was **"psychotic"** (Mr. Cassidy of the Orange County Jail mental health office), but did not realize the significance of what that meant. Here, defense counsel had experts appointed, but never even asked them about penalty phase mitigation issues -- she did not even talk to them. Because counsel was woefully unprepared, she could not reasonably inform Mr. Medina. Because of her unpreparedness, her actual efforts at the penalty phase were ineffective. This case involved a wealth of mental health mitigation. Without a tactic, and on the basis of inadequate preparation, defense counsel never presented it.

Had mental health mitigation such as that presented at the evidentiary hearing been presented to the jury at the penalty phase, the outcome surely would have been different. Confidence in the sentencing result in this case has been undermined, and relief is proper.

ARGUMENT III

MR. MEDINA'S RIGHT TO A FULL AND FAIR HEARING ON HIS RULE 3.850 MOTION WAS VIOLATED BY THE CIRCUIT COURT'S INITIAL ORDER LIMITING THE EVIDENTIARY HEARING AND BY ITS SUBSEQUENT ACTIONS AT THE HEARING WHICH FURTHER LIMITED MR. MEDINA'S ABILITY TO PRESENT HIS CASE.

The State answers Mr. Medina's claim that the lower court hearing was not full and fair because of the judge's initial limitation of the issues to be considered and because of his actions during the limited hearing by asserting that a circuit court judge has the inherent ability to control his courtroom. Appellant's counsel have no qualm about this, as was stated in

the initial brief. Even from a very cursory reading of the transcript, however, it is evident that the circuit judge here was going far beyond controlling his courtroom. He continually and repeatedly refused to listen to argument, bullied and threatened post-conviction counsel and interposed his own objections to evidence. Often, he would not even allow proffers, thus rendering the record that this Court must review incomplete. The proceedings resulted in less than a full and fair hearing, and the circuit court's conduct went far beyond exercising courtroom control.

Further, as noted in Appellant's initial brief, a number of issues raised in the 3.850 motion which required evidentiary resolution were summarily denied. These errors require the attention of this Court.

ARGUMENT IV

MR. MEDINA WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE OF COUNSEL'S FAILURE TO INVESTIGATE CRITICALLY IMPORTANT EVIDENCE ABOUT SUSPECT BILLY ANDREWS, AND/OR THE STATE FAILED TO DISCLOSE MATERIAL EXCULPATORY EVIDENCE CONCERNING THIS SUBJECT, IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS, AND THE LOWER COURT ERRED IN DECLINING TO ALLOW EVIDENTIARY RESOLUTION.

This claim is **not** a "disguised attempt to raise a direct appeal issue" (Answer Brief of Appellee, p. 35). Matters which are not reflected in the record on direct appeal cannot be raised

on direct appeal. This claim involves Bradv and ineffective assistance, classic Rule **3.850** issues.

Defense counsel failed to fully investigate Billy Andrews, even though counsel knew his significance in the case. Thus, defense counsel were never in possession of a wealth of critical information, presented for the first time in Mr. Medina's Rule **3.850** motion. This information could not have been raised on direct appeal, as it did not appear in the record since it was never presented to the jury, because of counsel's failures (and the State's withholding).

An evidentiary hearing on this claim was not only proper, but mandated by the express language of Fla. R. Crim. P. **3.850.** Failure to allow evidentiary resolution of this claim was error, and an evidentiary hearing is required.

ARGUMENT V

MR. MEDINA WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AND HIS RIGHT TO COMPETENT MENTAL HEALTH EXPERT ASSISTANCE BECAUSE OF HIS ATTORNEYS' UNREASONABLE FAILURES TO INVESTIGATE, AND BECAUSE THE MENTAL HEALTH ASSISTANCE ACTUALLY RENDERED PRE-TRIAL WAS INCOMPETENTLY SOUGHT AND PROVIDED, IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

This issue is properly resolved through the presentation of evidence, as similar issues have been resolved in countless other post-conviction capital cases in Florida. See State v. Sireci, 502 So. 2d **1221** (Fla. **1987),** subsequent history, **536** So. 2d **231** (Fla. **1988);** Groover v. State, **489** So. 2d **15** (Fla. **1986).**

Contrary to the Appellee's assertion, this issue cannot be barred for failure to raise it on direct appeal because by its very nature it requires proof of matters outside the record. Sireci; Groover; Mason v. State, 486 So. 2d 734 (Fla. 1986). Given this Court's precedents, the State's arguments are hard to fathom. This is a classic Rule 3.850 claim, one which requires an evidentiary hearing for its proper resolution. Sireci; Mason; Groover. Had all of the relevant, material information pled in Mr. Medina's 3.850 motion been provided to the mental health experts appointed pre-trial, their evaluations would have been very different: Mr. Medina's history is one of mental illness.

Defense counsel inexplicably failed to investigate and thus failed to provide this information to the mental health professionals, with the result that their evaluations and resulting reports did not consider readily available information concerning the very subject of their scrutiny: Pedro Medina. Undersigned counsel are ready to prove what the 3.850 motion pled. An evidentiary hearing on this issue was erroneously denied and must be afforded before this issue can be resolved properly.

The State, however, attempts to excuse defense counsel's failure to provide information to the appointed mental health experts by reference to an alleged tactical decision not to present negative testimony at the penalty phase of trial (Answer Brief of Appellee, p. 38). This argument does not work. First,

as pled, had proper mental health evaluations been afforded, the resulting evidence would have established mitigation -- something that is obviously not negative, but quite favorable. Second, an attorney cannot incompetently fail to investigate or prepare prior to trial and then rely on his or her inadequate pretrial preparations to determine strategy. Without proper investigation there can be no "reasonable" tactical decisions. Strickland v. Washington, 466 U.S. 668 (1984), held as much. See also Stevens v. State, 552 So. 2d 1082 (Fla. 1989). Here that is exactly what happened. Counsel's failure to investigate and provide information to the mental health experts resulted in professionally incompetent and inadequate evaluations. No strategy can be called "reasonable" under such circumstances.

The State further argues, simplistically, that defense counsel had no reason to pursue the appointment of a confidential mental heath expert since they were not pursuing an insanity defense. As noted previously, defense counsel never requested nor spoke to the appointed experts concerning mental health mitigation. This utter failure to prepare for the penalty phase constitutes ineffective assistance of counsel. An evidentiary hearing on mental health issues should have been conducted. The lower court erred in failing to do so.

ARGUMENT VI AND VII

THE CIRCUMSTANCES PRETRIAL AND AT TRIAL RAISED A BONA FIDE DOUBT REGARDING MR. MEDINA'S COMPETENCY TO STAND TRIAL, AND THE TRIAL COURT'S FAILURE TO INQUIRE VIOLATED THE EIGHTH AND FOURTEENTH AMENDMENTS.

MR. MEDINA WAS INCOMPETENT AT SENTENCING, AND HIS CONVICTION AND SENTENCE VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS.

The State asserts that Mr. Medina was competent to stand trial, because he testified (Answer Brief of Appellee, p. 40). With no factual detail to explain this argument it is difficult to fathom how the Appellee reaches the conclusions presented in its brief. Indeed, the State's current account is in direct conflict with the account of former defense counsel. In her affidavit, defense counsel Rodriquez stated that Mr. Medina's trial testimony "absolutely surprised" both her and Mr. Edwards, and that it was in conflict with what Mr. Medina had told them prior to trial and was inconsistent with the evidence, but that she did not believe Mr. Medina lied, but rather that he was "simply sick" (H. 1233).

Further, the Appellee's bald assertion that Mr. Medina "knew right from wrong and was capable of conforming his conduct to societal standards" (Answer Brief of Appellee, p. 40-41), like the Appellee's other statements concerning the mental issues in this case, seems to be based solely on the Appellee's opinion, since no citations are noted. As discussed in Mr. Medina's initial brief, there are important mental health issues in this

case, issues which required an evidentiary hearing for their proper resolution. See also Mason, supra. The lower court erred in failing to allow an evidentiary hearing on these issues while the Appellee's arguments are no more than conclusory denials of Mr. Medina's claims, with no citation to any record showing wherein the claims are refuted.

The State's own brief demonstrates the need for proper evidentiary resolution -- the State contests what Mr. Medina has pled, but fails to recognize that that very contest is why an evidentiary hearing is required. The State can cite to nothing in the record rebutting Mr. Medina's mental health claims because the record does not refute them. An evidentiary hearing is required.

ARGUMENT VIII

MR. MEDINA'S RIGHTS GUARANTEED BY THE FOURTH, FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS WERE VIOLATED WHEN THE STATE INTRODUCED HIS PURPORTED STATEMENTS OF APRIL 9, 1982, INTO EVIDENCE.

Again, the Appellee misperceives the function of direct appeal. This claim is not a "disguised attempt to relitigate the issue" (Answer Brief of Appellee, p. 42). Defense counsel's ineffectiveness in litigating the motions to suppress statements pretrial has never been addressed. Typically ineffectiveness cannot be shown without reference to material outside the record, i.e., through the presentation of evidence at a hearing. A hearing is required on this claim.

REMAINING CLAIMS

As to the remaining claims, for the reasons expressed in Appellant's initial brief, Mr. Medina reiterates that the circuit court erred in imposing procedural bars, and requests this Court to reverse and grant the relief to which Mr. Medina is entitled, including the full and proper evidentiary resolution that this case requires.

CONCLUSION

Because the lower court's orders were erroneous as a matter of fact and law, the decisions below should be reversed, and this case should be remanded for full and proper evidentiary resolution. In the alternative, based on the proof presented at the limited evidentiary hearing, Mr. Medina requests that this Honorable Court vacate his unconstitutional conviction and sentence of death.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been furnished by Hand Delivery, to Barbara Davis, Assistant Attorney General, Department of Legal Affairs, Magnolia Park Courtyard, 111-29 North Magnolia Drive, Tallahassee, Florida 32301, this 4th day of September, 1990.

Attorney