IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

GREGORY MILLS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

EMERGENCY ACTION: DEATH WARRANT SIGNED; ORAL ARGUMENT SCHEDULED FOR JANUARY 16, 1990

APPLICATION FOR STAY OF EXECUTION PENDING APPEAL OF DENIAL OF MOTION FLA. R. CRIM. P. **3.850** RELIEF

GREGORY MILLS, Defendant in the instant action, through counsel, respectfully requests that the Court enter a stay of execution in order to allow him to provide the Court with a professionally presentable brief on appeal of the circuit court's denial of relief under Rule **3.850,** Fla. R. Crim. P., and because of the devious errors in the circuit court's denial of an evidentiary hearing and Rule **3.850** relief. Given the time constraints involved in this case, and the tremendous overload which the Office of the Capital Collateral Representative (CCR) now faces, Appellant can only briefly refer to two of the claims for relief urged in this action. This is by no means a professionally presentable brief. All claims and supporting grounds presented below are fully incorporated and presented on

this appeal, whether specifically discussed herein or not.

A. REQUEST FOR STAY OF EXECUTION

The circuit court refused to conduct an evidentiary hearing notwithstanding the fact that Mr. Mills presented, among other issues, a truly substantial claim of ineffective assistance of counsel, particularly at the penalty phase of his capital proceedings. On this basis alone a stay of execution is proper in order to allow Mr. Mills proper evidentiary resolution, for the files and records not only did not demonstrate conclusively that Mr. Mills was entitled to "no relief," **see** O'Callaghan v. State, 461 So. 2d 1354 (Fla. 1984); Lemon v. State, 498 So. 2d 923 (Fla. 1986), the record supported Mr. Mills' claim.

The issues involved in this action are significant, and should be briefed for this Honorable Court's review. However, they cannot be properly briefed because of the impossible predicament faced by Mr. Mills' counsel, through no fault on Mr. Mills' behalf.[1] Mr. Mills' lower court pleadings and supporting documentary submissions have been provided to the Court. The

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[1] As this Honorable Court is well aware, the circumstances faced by the CCR office have reached crisis proportions. Thirteen (13) death warrants were outstanding in November and

(footnote continued on next page)

lower court did not allow itself to hear the facts -- no evidentiary hearing whatsoever has been held. A stay of execution is proper.

B. THE JURY OVERRIDE

Before the lower court the State argued that although the trial court's override of the sentencing jury's recommendation that Mr. Mills not be sentenced to death, and that his life should be spared, "might not be sustained today, the Florida Supreme Court's affirmance of the death sentence is the law

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(footnote 1 continued from previous page)

December, 1989, and ten (10) are outstanding now. Five new death warrants were issued earlier this week. The situation has gotten so out of hand that Appellant's counsel has not even had access to a photocopying machine this week -- the office's machine has been broken, and extensive repairs had to be undertaken. The support staff has worked around the clock typing pleadings on these and other cases -- even so, we have not caught up. The circumstances facing the office's attorneys have been written-up for this Court on a number of occasions and need not be repeated here -- some attorneys have found it impossible to go on, and have therefore resigned. Mr. Mills' counsel represents five (5) other clients under death warrant, and has barely been in his office these weeks, having to attend to various matters throughout the state. Without rehashing what has been provided to the Court before, it is respectfully submitted that a stay of execution in order to allow counsel to provide a proper brief on Appellant's behalf would be proper.

of the case." (Circuit Court Response,[2] p. 10). The State cited Johnson v. Dugger, 523 So. 2d 161, 162 (Fla. 1988), for support (Id.) The simple truth of the matter is that this override would not be sustained today. Three of the six aggravating factors found by trial judge were stricken on direct appeal. A fourth should have been stricken -- Mr. Mills was under sentence of probation at the time of the offense,

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[2]The response, although noted by the circuit court in its order denying relief, was **not** served on Mr. Mills' counsel until after rehearing was denied by the trial court. The certificate of service on the response has a December, 1989, date, crossed out by hand, and replaced by a handwritten January, 1990, date. Because the State gave its response to the trial court and not Mr. Mills' counsel, counsel never had an opportunity to signal to the lower court the errors in the State's pleading. Appellant shall not belabor the point, but one obvious error which made its way into the lower court's order can be noted here. In direct contravention of the facts proffered by Mr. Mills, including the facts reflected in the affidavits of former counsel proffered below, the State urged the trial court to make a finding that former counsel did not pursue mental health mitigating circumstances for tactical reasons. No such finding can be made in this case -- Mr. Mills' sentencing attorney stated on the record that she was brought in at the last minute (the trial attorney was not present at the jury sentencing) and then in her affidavit that she should have pursued mental health mitigation but neglected the matter because she was brought in at the last minute and only had one day to prepare. Without allowing any hearing at which it could ascertain the facts, however, the lower court accepted the State's invitation and made findings of fact without any evidentiary support. The lower court erred. Had the State properly served its response on Appellant's counsel, this error could have been pointed out. Mr. Mills vehemently asserted below that he should be allowed to present the facts supporting his claim at a hearing, and the circuit court acted improperly in refusing to conduct one and in making findings of fact without evidentiary support.

and probation, unlike parole, is not a "sentence of imprisonment." Justices McDonald and Overton, dissenting from the override affirmance, wrote on direct appeal:

> The jury's recommendation must have been predicated on the circumstances of this homicide and on nonstatutory mitigating evidence. The chief testimony against Mills came from Ashley. As previously indicated, Ashley received immunity from prosecution for this crime and other crimes in exchange for his testimony. Ashley said that Mills did the killing, but Mills has always denied this. The jury could have found the evidence sufficient to convict but still have had doubts about whether Mills intended to kill the victim. It could also have concluded that Mills and Ashley were being treated so disparately when their involvement was substantially the same that any such doubt should be weighed in Mills' favor. Mills was employed at the time of the crime and his employer thought well of him. Mills had a harsh and deprived youth, but his grandmother and sister were supportive of him. During prior incarceration he completed studies to the extent that he passed his G.E.D. tests.

Mills v. State, 476 So. 2d 172, 180 (Fla. 1985). The majority, under the pre-Hitchcock v. Dugger, 107 S. Ct. 1821 (1987), standard of review then applied by this Court, nevertheless found that the override was proper. Statutory mitigating factors (their absence) is all that was taken seriously, and all that was seriously discussed, by the majority in the direct appeal opinion. The nonstatutory mitigation noted by Justices McDonald and Overton, nonstatutory mitigation which today would be amply

sufficient to show that the override should be **reversed,**[3] was dismissed by the majority in Mr. Mills' pre-Hitchcock direct appeal as follows: "The purported mitigating circumstances claimed by Mills, but not found by the trial judge, are not sufficient ..." Mills, 476 So. 2d at 179 (emphasis added).

This case is clearly distinguishable from Johnson, cited by the State below. Unlike Johnson, where this Court found that there was no Hitchcock problem, this case involves Hitchcock error. The sentencing judge never referred to the nonstatutory mitigation in the record, either in his on-the-record pronouncement at sentencing or in his sentencing order. He listed the statutory factors and made findings on each. The judge said nothing to indicate that "serious," McCrae v. State, 510 So. 2d 874 (Fla. 1987), independent (of the statute's factors), Penry v. Lynaugh, 109 S. Ct. 2934 (1989), or meaningful, Hitchcock, supra, consideration was afforded to the nonstatutory mitigation reflected by the record when he chose to override the jury.

This case is in fact quite similar to Thomas v. State, 546 So. 2d 716 (Fla. 1989), another case involving a post-conviction

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[3] Mr. Mills' lower court pleadings, previously provided to this Court, presented a detailed analysis of the fact that the nonstatutory mitigation in the record would have warranted a reversal of the override under this Court's post-1987 (post-Hitchcock) application of Tedder v. State, 322 So. 2d 908 (Fla. 1975).

petitioner's claim that a pre-Hitchcock jury override was improper. In Thomas, this Court held that because "the record in this case leaves unresolved the question of whether the trial court considered nonstatutory mitigating evidence" in overriding the jury, resentencing before the judge was proper. Id. The same result is warranted here. If the record, particularly in an override situation, leaves and ambiguity about whether the sentencing judge seriously considered mitigating factors, resentencing is required. Nowhere do the sentencing judge's order or on-the-record statements at sentencing reflect that serious and independent consideration was afforded to the nonstatutory mitigation presented by Mr. Mills. At best, this record is ambiguous, and proper judicial resentencing is warranted.

Moreover, the record also amply reflects that the judge never applied the Tedder standard at the time that he overrode the jury. No reference (in the judge's order or otherwise) was made to why the jury's verdict was not "reasonable." No deference was given to the jury's determination.

Tedder was never applied by the judge who sentenced Mr. Mills to death, and the nonstatutory mitigation reflected by the record was not seriously considered by the judge and was not properly analyzed by this Court during the pre-Hitchcock direct appeal proceedings in this case. This override would not be

sustained today. This case is thus one of those instances in which "error that prejudically denied fundamental constitutional rights" is apparent, and in which this Court should "revisit a matter previously settled by the affirmance of a conviction or sentence." Kennedy v. Wainwright, **483** So. 2d **424, 426** (Fla. **1986).** A stay of execution and Rule 3.850 relief are proper.

C. INEFFECTIVE SSI 'ANCE OF COUNSEL AT SENTENCING

The lower court ruled that counsel acted tactically, accepting the State's invitation to make that ruling. But the lower court never allowed an evidentiary hearing. Mr. Mills pled a very substantial claim of ineffective assistance of counsel at sentencing. Trial counsel, an assistant public defender, left after the conviction, and sentencing counsel, another assistant public defender, was brought in one day before the sentencing phase was to begin. She met her client for the first time one hour before jury sentencing. She investigated virtually nothing, and no investigation was undertaken into mental health mitigation. As former counsels' affidavits, proffered below, reflect, there was no tactical or strategic reason for any of

this,[4] and the trial court erred in failing to conduct an evidentiary hearing.

Former counsel explains:

> My name is Joan H. Bickerstaff. I am an attorney practicing in Melbourne, Florida.
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> During 1979, I was an assistant public defender for the Eighteenth Judicial Circuit.
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> On Saturday, 18 August 1979, I received a telephone call from Bennett Ford, a senior member of the public defenders' office. Mr. Ford informed me that Mr. Mills had just been convicted of felony murder, and capital penalty proceedings would being on Monday, 20 August 1979. Mr. Ford told me he needed me to represent Mr. Mills in the penalty phase.
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> Mr. Ford impressed upon me the importance of my handling this phase of Mr. Mills' trial. Although I had not been involved with the case before this phone call and my only knowledge of Mr. Mills' case was from what I had read or heard in the media, I

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[4] Mr. Mills pled his claims in the 3.850 motion. He then submitted a proffer in support of the request for an evidentiary hearing with these affidavits. The lower court rejected the claim. It also noted in its first order that the motion for evidentiary hearing and stay application (which presented no new claims) had not been verified. Rule 3.850 requires that only the motion to vacate be verified. In any event, counsel for Mr. Mills then submitted a verification from Mr. Mills of every document filed on his behalf during the 3.850 proceedings, and requested rehearing, in order to comply with the unique burden which the lower court seemed to have in mind. The lower court then denied rehearing, making no reference to any want of verification. The lower court denied this claim on its merits. The merits of the claim are now before this Court. The lower court should have allowed evidentiary resolution, and its failure to conduct the requisite hearing warrants reversal.

was asked to represent Mr. Mills by Mr. Ford.

I spent the weekend reviewing the case. At no time did I consider attempting to establish statutory or non-statutory mental health mitigation. I never even thought about it. At no time did Mr. Ford or Mr. Greene and I discuss mental health mitigation. I had no tactical or strategic reason for not investigating and presenting evidence of mental health mitigation to the jury or the court. It simply never occurred to me that mental health mitigation should have been developed and presented.

On Monday, 20 August **1979,** the morning the penalty phase began, I met Mr. Mills for the first time. Mr. Ford, Mr. Greene and myself spent an hour or so explaining the penalty proceedings to Mr. Mills. During this session, we did most of the talking to Mr. Mills, and Mr. Mills did not have the opportunity to talk very much because the attorneys were doing the talking. It did not occur to me that I should be looking for indicia of mental illness.

Mr. Mills' collateral attorneys have shown me a **1974** psychiatric evaluation of Mr. Mills and various affidavits that reflect indicia of mental illness or possibly brain damage. I did not have knowledge of these materials prior to my representation of Mr. Mills. If I had reviewed those materials prior to the penalty phase, I would have a retained a mental health professional to examine Mr. Mills for mental illness or organic brain damage. Unfortunately, I was brought into the case too late to do any mental health investigation whatsoever.

I have reviewed a neuropsychological evaluation report on Mr. Mills prepared by Henry L. Dee, Ph.D. The information reflected in this report would have been valuable evidence of statutory and non-

> statutory mitigation that I would have presented to the jury and judge if I had been given the time to assess mental health mitigation issues for Mr. Mills' case.
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> I was not informed when the sentencing was to occur in Mr. Mills' case. I heard that he had been sentenced to death after the fact. If I had been asked to represent Mr. Mills in the sentencing proceedings, I would have done so. I would have argued that there was uncontroverted mitigation presented and established that justified the jury recommendation of life in prison. I would have argued the mitigation presented required the court to sentence Mr. Mills to life in prison under the standards set out in Tedder V. State, 322 So.2d 908 (Fla. 1975). These issues should have been argued.
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> Mr. Greene [trial and judge sentencing counsel] never asked me to review with him the mitigation I presented in the penalty phase. I did not discuss any sentencing strategies with Mr. Greene or Mr. Ford prior to the sentencing.

(Affidavit of Joan Bickerstaff). Mr. Green also provided an affidavit in which he explained that he did nothing to prepare for the penalty phase, and did not attend the proceedings. No penalty phase investigation was undertaken in this case. No mental health assistance was sought out, although such assistance should have been -- Mr. Mills' mental health history, which was never investigated by counsel, reflected that counsel's client has mental health impairments. Indeed, while incarcerated as a juvenile Mr. Mills was diagnosed as doing poor on tests for brain damage and as being "concrete." The juvenile authorities

requested that an EEG be conducted to assess the question of brain damage. He was diagnosed as suffering from a childhood mental health disorder, and further tests were found to be required to assess his "brain dysfunction." Even the presentence investigation report's preparer was able to locate some of that history. Counsel developed none of it, and failed to even consider mental health issues. No investigation was done. No expert was asked to assess the statutory or any non-statutory mental health mitigating factors, because of counsel's deficient performance. Such factors would have established an ample reasonable basis for the jury's verdict of life, and would have precluded an override. As counsel stated in her affidavit, she would have presented such evidence, but was remiss in failing to investigate it. This is precisely the type of ineffective assistance of counsel claim found sufficient to warrant relief in State v. Michael, 530 So. 2d 929 (Fla. 1988), and sufficient to warrant an evidentiary hearing in O'Callaghan, supra.

An eminently qualified neuropsychologist and psychologist, Dr. Henry Dee, was asked to assess Mr. Mills' mental health during post-conviction proceedings. His report was proffered below. His conclusions were:

> These neuropsychological test results indicate cerebral injury, with the most likely candidate for the citiology being the head injury he received as a child. It should also be pointed out that while memory

> is impaired, it is also true that impulse control, ability to inhibit one's actions, and irritability are also some of the most frequent concomitants of head injury. This is particularly true of frontal injuries which he appears to have sustained (although other damage may not be ruled out), and thus it can be said to reasonable degree of psychological certainty that his capacity to conform his conduct to the requirements of law would have been substantially impaired [and] that Mr. Mills suffered from an extreme mental dysfunction and disturbance at the time of the offense. The fact [that] he is brain damaged has been discussed previously. Impairments such as these have been discussed in literature for many years (cf Levin, Benton, and Grossman, Oxford University Press, New York, **1982**; Blau (Archives of Neurology and Psychiatry **1936; 35:723-769).**

(Report of Dr. Dee, Summary Impression). This offense involved an impulse shooting of a victim during a burglary at which the victim surprised the assailant. The assailant was taken aback, fired one shot from a shotgun, and ran away.

Statutory and non-statutory mitigation arising from he diminished impulse control and ability to reason of brain damaged individuals would have been critical, and would have established an ample reasonable basis for the jury's recommendation of life. However, counsel, ineffectively, conducted **no** investigation.

Other important mitigation was also ignored. Mr. Mills presented below the report of Jerry Miller, D.S.W., President, National Center on Institutions **and** Alternatives. Mr. Miller's report reflected some of the areas of available mitigation which could have been investigated and should have been pursued by

reasonable counsel in this case, but which were ignored. Mr. Mills also presented various affidavits from significant mitigation witnesses who counsel, coming in at the last minute, never investigated, developed, or presented. This evidence included the following:

> My name is Allen Mitchell and I live at 717 Hickory Avenue, Sanford, Florida. I am the owner and proprietor of Sonny's Pool Hall located at 501 Sanford Avenue in Sanford. I've been in the pool hall and beer garden business for over 30 years.
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> My pool hall has always been a gathering place for black teenagers in the Sanford Avenue neighborhood.
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> Gregory Mills was one of the teenagers who came to my place on a regular basis. He started hanging around me when he was a little boy. I can honestly say I knew Greg well. I've always had a special interest in him and I believe that Greg respected me. I can remember many a time that Greg's mother, Lucille Mills, would come looking for him and he would be at my place. She asked me to look out for him while he was there and I always did. What I liked about Greg, different from some of the other boys, was that he would never fight or curse in my place. Greg's only problem, as I see it, was that he was easily led and would do a lot to please his friends.
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> Greg had a hard life. His father, Arlington Mills, drank a lot and loved to gamble. As far as I know, he didn't take up a lot of time with his children. (Fact is, I probably spent as much time with Greg as his Daddy did.) When Greg was just a boy, his father was killed by his mother's sister, leaving seven children for Mrs. Mills to support. Greg's mother is a fine, hard-

working woman, but as hard as she worked, I know it was rough for her to support her children on a farmworker's salary. I think that's part of the reason Greg got into trouble when he was young, because he didn't have a real good start in life what with no father and his mother always having to work.

I don't believe, and will never believe, that Greg killed anybody. When I heard that Greg was arrested, I was shocked. In 1979, after Greg got out of prison, I know that he had made a change in his life. He came to the pool hall to tell me he had a job. Greg had made up his mind, he was going to go straight.

The talk was that Viola Mae Stafford said that she had lied about what really happened and that Greg was innocent. Viola was a prostitute, common knowledge in the Sanford black community. This young lady would do almost anything for money. She was dating Sylvester Davis, a man who was a rough talker. I wouldn't doubt that Sylvester Davis was a violent man. But Viola Mae never did get the chance to tell the truth 'cause she was murdered back in 1984.

A lot of people in Sanford don't believe that Greg Mills killed Mr. Wright. Most people who know Viola Mae Stafford, Sylvester Davis and Vincent Ashley consider them more capable of doing this crime than Greg.

Had Greg's lawyer asked me, I would have told the judge anything I knew about Greg Mills.

(Affidavit of Allen Mitchell).

My name is Sandra Gaines and I live in Sanford, Florida, my home for all of my life. I am the Orange County coordinator for the Community Action Agency's homeless and surplus commodities programs.

I don't think there was anybody in Sanford, black or white, who didn't know

about the arrest and trial of Gregory Mills. Sanford is a very small town and back then a black man killing a white man was of interest to both races, and of special interest to the white community. Although conditions have changed now, racism was still prevalent in our community in **1979**. I read something about the case in the Sanford Herald. I think Mr. Wright's prominent position in the community made this case "front page" news. Although I didn't know Mr. Wright personally, he was a well-known and respected Sanford businessman.

I was shocked when I found out that Gregory Mills had been arrested, because I never thought he would do something like that. I really got to know Gregory after he returned home from prison in **1979**. Gregory worked at the Food Barn store, where I did all of my grocery shopping. I'd always see Gregory when I was at the store, and would sometimes stop and talk to him. He told me he was really trying to do right, and I believed him.

Gregory is from a large, poor family. I first met Gregory's family at the funeral of his father, who was killed by his mother's sister. After his father's death, times were especially hard for Gregory and his family. I know Gregory's mother really loved her children, but she had to work all the time to support them. I always heard that Gregory's big sister, Diannetta, was more like a mother to him and his six sisters and brothers than his own mother.

I believe, like so many other people in our community, that Gregory is innocent. The talk is that Viola Mae Stafford and Sylvester Davis were definitely involved in the killing of Mr. Wright. Although I think people should be punished for the crimes they commit, I am sure that justice has not been done in Gregory's case. I don't feel comfortable about the deals that were made with various state witnesses, giving them

immunity from prosecution. I just can't help wondering about these people's real involvement in the crime. I've just never felt right about Greg's trial, because it seems that neither the police nor Greg's lawyers did a complete investigation of all the people who could have been involved. The whole truth just hasn't come out.

I would have been willing to provide this information to the court or to Greg's lawyers if they had talked to me.

(Affidavit of Sandra Gaines).

My name is Louise Williams Miller and I am Gregory Mills' aunt. My sister is Lucille Williams Mills, Gregory's mother.

I have known Greg all of his life and I am very concerned and upset about Greg's death sentence. I've had trouble myself and so I understand some of what he is going through. It is hard for me to believe that Greg was convicted of killing someone. He was always a nice, friendly boy and, in my opinion, the best of all of my sister's sons. But there's always been trouble in Greg's life and it started with his father and mother.

Arlington and Lucille, whom we called June and Cill, were married when Cill was 12 years old and pregnant with Diannetta. June and Cill started fighting from day one. He beat her and she would fight back in self-defense, but it didn't do any good. June always liked to beat my sister. He seemed to get pleasure from hurting her. I don't know why he liked to fight her so much. He would beat her in front of the children, in the streets, just anytime he felt like it. It just didn't make sense. I told him many times that Cill was his wife and that he shouldn't beat her so much. It was painful for me to watch how he treated her. I thought sometimes that during one of those beatings he would kill her. A lot of the

fights was because of June's habits.

Greg's father was what I call a compulsive gambler. He'd rather gamble than eat or drink. I guess June took to gambling naturally, because his father was also a gambler. Every Friday after work, June would take his pay and go to the gambling places. If he won, he would bring his money home. If he lost, he would go home and take Cill's pay--her rent and grocery money. If she refused to give him her pay, he would fight her and take her money. Although June won a lot at gambling, he lost even more. June was never able to adequately support his family and the burden fell on Cill and those of willing to help her, mostly me and mama. I've bought food for that family many a day.

When she could no longer stay with June, she asked mama to keep the kids and she went in 1958 to Alachua, their first separation. Within a few months, Cill came home pregnant. June took her back and accepted the baby and gave it his name, but he seemed to fight her even more after she returned home, probably because of the baby. The rumor was that a shotgun wound inflicted by his brother-in-law and triggered by a gambling debt, injured his groin and his pride. They said June couldn't make no more babies. June changed for the worst. He was meaner and more hostile every day.

In 1959, Cill went to live with our mother, when she was pregnant with Greg's brother, Anthony, who died of meningistis when he was two years old. I told Cill that I would work and help out with the kids. After the baby was born, she went back to June.

Cill could have left June, but not without going far enough away so he couldn't get to her. That just wasn't possible with seven children. Cill worked so hard, sick or well, pregnant and sometimes into her eighth or ninth month.

I would hold June's money for him when he gambled. He was a great gambler, one of the best. During February 1968, I loaned June some money, which he later refused to pay. Each time I asked about the money, June would say, "take it, if you want **it."** He started to fight me, hitting me in the head. Our disagreement turned into a dispute which lasted about two weeks. One day June and I were outside of my house arguing when all of a sudden he kicked me and cursed me. I warned him not to fight me. A few minutes later, I shot June Mills four times in the temple and killed him. In a trial before the judge, I received a 20 year sentence to serve 3 years. Seminole County Sheriff Galloway told my mother if he had his way I wouldn't serve nary a day. The sheriff talked to the judge and told him that June had a record and how mean he was. The judge said that was the lightest possible sentence he could give.

I liked June. I didn't hate him: It wasn't a hating thing. Something came up in me all of a sudden. When I was in jail before being transferred to Lowell Correctional Institution for Women, Greg called to me from outside of the jail. He said, "Aunt Louise , how are you?" I said I was fine. I'll never forget what he said next. "Aunt Louise, we can eat now."

I don't like to talk about this incident, because I've tried to put it behind me. I regretted leaving my children. I haven't been in any trouble since. But the courts should know what kind of life Greg really had. No one has ever asked me about Greg before. If someone had, I would have been happy to tell them anything.

(Affidavit of Louise Williams Miller).

I am Lucille Williams Mills, the mother of Gregory Mills. I was born in Camilla, Georgia, but I have lived in Sanford, Florida most of my life. I am a

farmworker.

Gregory Mills was the fifth child born to me and Arlington Mills. I was 20 years old when I had Greg. Throughout my pregnancy, I suffered from anemia and low blood and required two blood transfusions. Of all my children, this was my most difficult pregnancy. Usually, I worked until my eighth or ninth month. I stopped working during my sixth month and Greg was delivered in my ninth month, May 12, 1979, at the home of the black nurse-midwife, Frances Marie, who was sort of like the poor people's doctor. I never had the money to have any of my babies at the hospital. They were mostly born at home or at the home of the midwife.

Greg was always a good baby and grew up to be a good boy. His daddy said that Greg was an old man and sometimes called him little man. He always acted grown for his age. Greg and his daddy were very close. He would take him out with him a lot. I know it hurt Greg a lot when he died.

Greg's daddy was killed by my sister, Louise Williams, February 1968. I never knew why Louise killed him. I never asked. June was dead and there was nothing I could do about it. I felt very sad, but I also felt a great deal of relief.

My husband was a man who liked to fuss and fight. We would fight over money, especially his gambling habits. We barely had enough money to make ends meet. But June, that's what we called Arlington Mills, loved to gamble. He would lose all of his pay and then come home to get mine. He would beat me if I didn't give it to him. We had daily physical fights or arguments because of money, frequently in front of the children. For years, we lived in a two room house and there wasn't much you couldn't hear or see.

Living with my husband caused me so much trouble, I left him and the children and went

to Alachua to do farmwork. That was the first time in a long time I felt free. I felt like I was gonna bust if I didn't go. I asked my mama to keep the kids, but she never was one for keeping babies. So I came back after two months. After I got back, Johnny Lee was born. Johnny Lee wasn't my husband's baby, but we went back together and Johnny Lee carries the Mills' name.

It was hard on me after June died. I had all the children and very little help. But I did the best I could to keep them fed and clothed. I had a grocery store account and I paid a little on that every week so that we could have food. I always had a garden, so we never lacked vegetables. I tried to keep my children in school, but I worked so much I couldn't always run behind them. I never had enough of everything that I needed.

I depended on Diannetta, my oldest child, to do the cooking and cleaning and to take care of the younger children. She was just like the mama. The children really loved her and she loved them.

I remembered when Greg started getting into trouble. I don't know what was wrong with him. He liked to pick up things. I didn't teach him that, but it's just something that he started doing. I whipped him for what he did, usually with a switch or a belt. But I didn't do a lot of whipping. And June wasn't around to do much of anything with the children. He would get behind Greg. Greg would just say he was sorry.

Greg stayed away from home a lot. He went to two or three boys' homes. While he was away, I began a second family with Elder Matthews. Greg was going more than he was coming. I think he was 15 or 16 the last time he came to live in my house.

The last time that Greg was home, I really thought he was out for good. He had a

little house and a job, making his own money. No matter what anybody says, I don't believe Greg killed anybody.

Viola Mae Stafford came to see me before she was stabbed to death died and she said that she was sorry about Greg. She said Greg didn't kill anybody and that she lied at the trial. And, I'll believe to the end that Greg is innocent.

I've often thought of what I could have done to keep Greg from this. I tried all that I knew to do. I just had too many children to care for by myself.

Had Greg's lawyers come to see me, I would have told them all I knew that might be of help. I was never contacted by anyone. I hope that the court will consider Greg's upbringing when deciding his fate.

(Affidavit of Lucille Williams Mills).

I, Donorena Harris, am an investigator employed by the State of Florida with the Office of Capital Collateral Representative (CCR), **1533** South Monroe Street, Tallahassee, Florida **32301**. I investigate cases for individuals seeking post-conviction relief within the State of Florida.

In the course of CCR's representation of Gregory Mills, I talked with Dianetta Williams Alexander on January **24**, 1988, at the Holiday Inn in Sanford, Florida.

Ms. Alexander and I talked about Gregory Mills' upbringing. The following is an account of Ms. Alexander's statements:

a. My name is Diannetta Williams Alexander and I was born in Sanford, Florida, my home for all of my life. My younger brother is Gregory Mills. I am employed as an Orange County Public school teacher. I hold a Bachelor's and a Master's degree in education.

b. I am very concerned about Greg, because he is as dear to me as my own son. I am also concerned because I don't believe the criminal justice system understands how my family's desperate circumstances affected Greg.

My parents were farmworkers, who worked in the fields from dawn until dusk and sometimes into the night. Although I was a child, I was given adult responsibilities. My job when I was big enough was to cook, clean and care for six younger sisters and brothers. As a result, I developed a special affection for the children and have done all that I could do to help them make their way in life.

c. Mama and daddy were too young -- mama was 12 and daddy was 17 when they had me -- and totally unrealistic about how they would function as parents and as individuals. They attempted to do what people with no responsibility do, without examining at what cost to the family. Our parents loved us, but were ill-prepared to properly raise seven children. My parents were away from home more than they were at home, particularly my father. Very little quality time was spent with the children nurturing their proper growth and development. Both of my parents drank alcohol openly and used profanity in front of the children.

d. My father was a gambler, who spent most of his weekends at the tables drinking and gambling. He often gambled away his weekly pay, leaving us with very little, if anything, except my mother's earnings to live on. Daddy would come home drunk and curse in front of the kids, as did my mother. Those desperate times led me to deceive my father for the first and only time in my life. Although I was just a child, my parents often gave me their money for safekeeping or for bill paying. One evening, my father came home drunk, after gambling the night away.

He had won $500, a huge sum in my opinion. I thought of the groceries and clothing I could buy for the children if I had **$500** and quickly decided to keep the money. I knew that when my father awakened the next morning, he would have little or no memory of what was said.

Occasionally, my mother accompanied my father to gambling places, leaving the children in my care for an entire weekend.

In **1958,** our mother abandoned us and moved to Alachua. The children resented our asked my father not to take her back. But he did and found out later that my mother was pregnant by another man with Johnny Lee Mills.

I remember a time when we had no food. My parents were away and I had no money. I was in the 7th grade so I was **13.** The children were hungry, so I went to a nearby farm and stole several heads of cabbage to feed the children.

e. Greg had a very rough life. While deprivation was a part of our lives, so was violence. When Greg was **11,** our father was murdered by our aunt, my mother's sister. Despite his shortcomings, Daddy loved all of us very much and we loved him. We were confused and deeply hurt that he was dead. My mother started dating various men, which was upsetting to all the children, especially the boys **--** Greg, Lamar and Arlington. Greg and Lamar had begun to get into trouble and desperately needed counsel and discipline. My mother didn't take any time with the boys and was a poor disciplinarian. My brother, Arlington, told my mother the reason our father was dead and Greg was in trouble was because she put the men before her own sons.

I'm not sure that's entirely accurate: My father lived hard and fast and socialized in an environment where shootings were not

> uncommon. Who can say how long he may have lived. He had already been shot by my uncle with a shotgun several years prior to his murder, by my uncle.
>
> Arlington's assessment of Greg was true. He desperately needed somewhere to go, a place with some structure. If Greg stole, it was because he was placed on his own. After my father was killed, my mother began courting again. My mother put me out of her house at 17 because I disapproved of the men she dated. Greg also bitterly disapproved of my mother's boyfriends and stayed away from home, when he was 13 or 14, to avoid arguments and disagreements. My sister was on her own at 14.
>
> g. In 1979, when Greg came home after being institutionalized for several years, he wanted to make a fresh start. He lived with me and my family and found a job almost immediately. He found an apartment and established a bank account. I don't believe that Greg had any reason to break into somebody's house. I believed in my brother's innocence and will never give up on justice being done in this case.

(Affidavit of Donorena Harris).

And was a great deal more. Statutory and nonstatutory mitigation was abundant in this case, but was not investigated, developed, or presented. Counsel did not function effectively.

The applicable legal standard concerning the mental health issues has been set forth in Futch v. Dugger, 874 F.2d 1483 (11th Cir. 1989), and by this Court in O'Callaghan and Michael, supra. Under that test, the petitioner must be shown that the failure to obtain an expert or investigate mental health was not tactical. Futch, 874 F.2d at 1487. That was the case here, as counsels'

affidavits reflect. Prejudice is shown if "there exists at least a reasonable probability" that a psychological evaulation would have provided favorable information, Futch, 874 at 1487, or if the attorney's failure to secure an expert opinion on the mental health mitigating issues undermines confidence in the outcome of the penalty phase proceedings. Michael, 530 So. 2d at 930. Obviously, the prejudice showing was also made below, and an evidentiary hearing was therefore warranted. With regard to non-mental health mitigation, petitioner was required to submit that favorable mitigating evidence was available and that counsel had no tactical reason for failing to investigate it. O'Callaghan, Stevens v. State, 14 F.L.W. 513, 515 (Fla. 1989). Mr. Mills submitted this as well, again showing the need for an evidentiary hearing.

The trial court erred in failing to allow evidentiary resolution. A stay of execution and a remand are proper.

D. CONCLUSION

Based on his submissions below, which were previously provided to the Court and which are incorporated fully herein,[5]

[5]All issues presented below are submitted to this Court on this appeal, although counsel has had no opportunity to brief them.

Mr. Mills respectfully submits that a stay of execution is proper and respectfully urges that the Court allow him the opportunity to file a professionally presentable brief.

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 United States Mail, first class, postage prepaid to, Kellie Nielan, Assistant Attorney General, **210** North Palmetto Avenue, Suite **447**, Daytona Beach, Florida, **32114** this 12th day of January, **1990**.

Billy H. Nolas
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