

derelict" Page 7, Response). As Petitioner points out in his petition, there was no basis in the record to accept Mr. Williams' testimony to the effect that he recognized Mr. Torres-Arboleda in the original photopak, but withheld that information from police. Had this issue been presented to this Court on direct appeal, it would have been able to prevent Mr. Torres-Arboleda's wrongful conviction and sentence of death. It should do so now.

II. CLAIM II

Respondent also concedes that Petitioner's Claim II, at least in part, is cognizable in a petition for writ of habeas corpus (Page 7, Response). Respondent characterizes that portion of Claim II as a Booth claim and urges this Court to reject the same under Payne v. Tennessee, 501 U.S. _____, 111 S.Ct. 2597 (1991). An examination of Claim II reveals, however, that this claim, as well as Petitioner's Claim VI on direct appeal, go not to just the type of character evidence allowed in Payne, but also to the prosecutor's outrageous reliance on non-statutory aggravating factors as he implored the jury again and again to place themselves in the victim's shoes. Payne did not justify this type of comment. This Court had often rejected it as improper. As stated in the Petition, this Court should revisit the issue and grant relief at this time.

III. CLAIM IV

Notwithstanding Appellee's protestations to the contrary, Claim IV, that the jury override in this case was arbitrary and

capricious, was raised both on direct appeal (Claim IX) and in the petition. While this Court rejected the claim on direct appeal, its position was rejected in Parker v. Dugger, 111 S. Ct. 731 (1991). In fairness, that claim should be revisited now and relief granted.

IV. OTHER CLAIMS

Respondent does not address any of the remaining claims contained in the petition, claiming that none state a cognizable claim in habeas corpus proceedings. Each, however, are based upon ineffective assistance of appellate counsel (Pages 79-82, Petition). Insofar as Respondent fails to address the effectiveness of appellate counsel or the merits of the underlying claims, Petitioner relies upon those arguments contained in his petition and incorporates the same in this reply.

CONCLUSION

Respondent does not even attempt to demonstrate to this Court why it should not grant relief based upon the vast majority of Petitioner's claims. As to the remaining claims, Respondent demonstrates no reasons which justify the denial of Mr. Torres-Arboleda's petition. Relief should be granted.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first class postage prepaid, to all counsel of record on October 4, 1993.

Respectfully submitted,


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