

IN THE  
SUPREME COURT OF FLORIDA  
CASE NO. 77634

**FILED**  
SID J. WHITE

PEDRO MEDINA,  
Petitioner,  
v.

JUN 3 1991  
CLERK, SUPREME COURT  
By [Signature]  
~~Chief Deputy Clerk~~

HARRY K. SINGLETARY, JR., Secretary  
Department of Corrections, State of Florida,  
Respondent.

REPLY TO STATE'S RESPONSE  
TO PETITION FOR WRIT OF HABEAS CORPUS

LARRY HELM SPALDING  
Capital Collateral Representative  
Florida Bar No. 0125540

MARTIN J. MCCLAIN  
Chief Assistant CCR  
Florida Bar No. 0754773

JUDITH J. DOUGHERTY  
Assistant CCR  
Florida Bar No. 0187786

OFFICE OF THE CAPITAL COLLATERAL  
REPRESENTATIVE  
1533 South Monroe Street  
Tallahassee, Florida 32301  
(904) 487-4376

COUNSEL FOR PETITIONER

PRELIMINARY STATEMENT

Counsel for Mr. Medina herein provide a reply to the Respondent's contentions regarding Mr. Medina's claims for habeas corpus relief. As a reasoned review of the State's submission would show, the State has said nothing to rebut this petitioner's entitlement to relief on the merits of his claims but has relied solely on the argument that because the issues were previously raised on direct appeal they are now procedurally barred. This reply will therefore briefly discuss the state's assertions and demonstrate the errors in the Respondent's analysis.

CLAIM I

MR. MEDINA WAS INCOMPETENT AND WAS CONVICTED AND SENTENCED IN VIOLATION OF THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS WHEN THE COURT REFUSED TO CONDUCT A COMPETENCY HEARING DURING TRIAL, REFUSED TO APPOINT A MENTAL HEALTH EXPERT, AND ACCEPTED PROFESSIONALLY INADEQUATE MENTAL EVALUATIONS OVER THE OBJECTION OF COUNSEL.

The State argues that Mr. Medina's incompetency claim is procedurally barred (Response at 11-14). Although Mr. Medina concedes that all of these issues were raised on direct appeal, he reasserts his claim that the issues were not adequately briefed in in the direct appeal brief which only devoted a page and a half to these issues.' Fundamental error occurred which should be rectified by this Court at this time.

Mr. Medina would strongly urge this Court to give meaningful

---

'Even after being rewritten numerous times to reduce the page length, these same issues take up 73 pages in the pending habeas petition.

review to the merits of his claim. Mr. Medina's trial counsel informed the court before trial that his client was suffering from severe mental disabilities and he was unable to communicate with him.

Mr. Medina exhibited bizarre behavior throughout the trial, laughing during the voir dire (R. 28); being unable to understand that he could not talk to the judge during court proceedings (R. 3-6); speaking in a loud voice during open court (R. 3; 111); and being disruptive during court. (R. 66-74). Mr. Medina was ignorant of the role his attorneys were to play on his behalf and totally at a loss as to what was happening around him (R. 114-15).

On the second day of trial, Mr. Medina's behavior was so inappropriate that he had to be forcibly subdued in order to be brought to court. The trial court heard statements relative to whether Mr. Medina's behavior was so uncontrolled that he would have to be shackled (R. 227-31). The court heard jail personnel explain that Mr. Medina was very unpredictable and hyper and that he could change from being calm to being very, very agitated at the drop of a hat "for no apparent reason". Although his behavior was disruptive, it is obvious from the record that it was not Mr. Medina's intent to deliberately disrupt the proceedings and on the contrary he did his best to behave appropriately and cooperate with the court. Mr. Medina's mental condition continued to decompensate seriously under the stress of the trial proceedings.

Mr. Medina's inability to communicate with his attorney, to maintain appropriate courtroom behavior or to understand the proceedings, prompted his trial counsel to renew his request for a competency evaluation. The request was denied.

Mr. Medina has argued to this Court that based on these facts as well as other facts recited in the petition, (1) the trial court was not accurately informed of the severity of Mr. Medina's mental condition before the trial due to the inadequate pretrial evaluations; (2) the trial court wrongly refused the pretrial request for a third evaluation where trial counsel made strong representations to the court just before trial that he was unable to communicate with Mr. Medina; (3) there were ample, reasonable grounds during the trial to put the court on notice that a competency hearing must be conducted; and (4) it was a violation of due process to sentence Mr. Medina while he was incompetent.

While Mr. Medina acknowledges that these issues were raised on direct appeal, he strongly urges the court to reconsider these issues on their merits.

#### CLAIM II

MR. MEDINA WAS DENIED DUE PROCESS WHEN "RED FLAG" INDICATORS OF INCOMPETENCY WERE NOT EVALUATED BY ANY MENTAL HEALTH EXPERTS IN VIOLATION OF MASON V. STATE AND IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS. MOREOVER, AKE V. OKLAHOMA IMPLICITLY OVERRULED THIS COURT'S DECISION ON DIRECT APPEAL.

The State argues that Mr. Medina's claim that his due process right to a professional competent, court-funded

evaluation of his mental status at the time of the offense, his mental status at trial, and whether mitigating circumstances existed is procedurally barred because it was raised on direct appeal. Although Mr. Medina concedes that the issue was raised on direct appeal, he asks this Court to reconsider the claim on the merits due to the wealth of compelling factual evidence which was never brought to this court's attention. Fundamental error occurred.

Doctors Wilder and Gonzalez relied on a brief, self-report interviews in evaluating Mr. Medina. The doctors never requested or inquired into background material. Consequently, they never obtained critically important facts. The experts never knew that Mr. Medina could not aid his attorneys in his defense or understand courtroom procedures. They never knew that jail personnel had noted suicide attempts, psychoactive medication, inappropriate laughter, sudden extreme mood swings, exposure, singing, beating on walls, and hallucinations that his mother was in his cell, to name only some of the many strange behaviors. They never knew that Mr. Medina had three prior hospitalizations in Cuba, that there was evidence of seizures, and that he had been taken directly from a mental hospital in Cuba and put on a boat to Miami. None of this critical information was known by the experts. Since almost all of this information appeared in Mr. Medina's jail records, it would have been a simple and routine matter for the doctors to have reviewed his medical records while they were at the jail interviewing Mr. Medina.

Given the severity of Mr. Medina's bizarre behavior, it was unreasonable for the experts not to perform any testing which could have revealed the severity and nature of his mental deficiencies even though Mr. Medina had received such testing before. No effort was made to diagnose Mr. Medina's illness. No explanation was presented to the judge and jury for his bizarre behavior. All the indicia of severe mental illness were present, and it is inexplicable that no testing or other attempts were made to reach a diagnosis of the mental illness which had required three prior hospitalizations, and psychological testing. Mr. Medina's mental state had even been recognized by the jail personnel who characterized him as a "signal 21" indicating that he had significant mental illness (R. 945-51; jail records).

Although these matters were raised on direct appeal, this Court should now address the merits based upon the dramatic and irrefutable evidence before the Court.

### CLAIM III

MR. MEDINA WAS DENIED A MEANINGFUL AND INDIVIDUALIZED CAPITAL SENTENCING DETERMINATION BECAUSE OF THE COURT'S RULING THAT A DEFENSE EXPERT WOULD NOT BE APPOINTED; THIS IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

The State argues that this issue was raised on direct appeal and is therefore barred. Again, although Mr. Medina concedes that the issue was in fact raised on direct appeal, he urges the Court to address the compelling and unrefuted evidence that Mr. Medina did not receive a constitutionally individualized sentencing.

#### CLAIM IV

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.

The State argues, and Mr. Medina agrees, that the admissibility of his statements was addressed on direct appeal. However, fundamental error occurred when this Court affirmed. The facts presented in the petition establish that Mr. Medina was Spanish speaking and only had a rudimentary understanding of English. Words which were used to advise him of his rights such as "waive," "evidence," "entitled," "attorney," "hereafter," "remain," "threatened," "coerced," "enduce," "encourage," "statement," "present," "afford," "appointed," "desire," "consult," and "interview" were far above his simple knowledge of the language. Mr. Medina did not even understand such words as "wife" (R. 215). Not only did Mr. Medina have only a rudimentary understanding of English but he did not understand the American justice system. Finally, Mr. Medina's perception of reality was limited not only by his lack of English language skills but also by his severe lifelong mental and emotional illness.

Mr. Medina testified that he only proceeded to give a statement to the Orange County detectives because they were not in uniform and he did not understand that they were police, he was confused, and his language skills were too poor to understand his rights (R. 217-19; 1991-92). When Mr. Medina was first advised of his rights by a uniformed trooper, he told the trooper

he did not wish to give a statement (R. 345). On April 9, 1982, Mr. Medina again stated that he did not want to give a statement. (R. 840). Inexplicably, the court suppressed the first statement because Mr. Medina requested an attorney but not the subsequent statement.

When asked if he understood his rights, Mr. Medina did not reply (R. 839). When asked if he wanted to talk, Mr. Medina said "no." (R. 840-41). Detective Nazurchuck continued the interrogation because he "wasn't too sure what he meant by no." (R. 201).

The statement was clearly inadmissible. Towne v. Dugger, 899 F. 2d 1104 (11th Cir. 1990); Cervi v. Kemp, 855 F.2d 702 (11th Cir. 1988). The State then used the statement to obtain and produce critical evidence against Mr. Medina. It was not harmless error.

#### OTHER CLAIMS

Mr. Medina's remaining claims involve ineffectiveness of appellate counsel (Claims V, VI) and thus are properly presented in a habeas corpus petition. All of these claims also involve fundamental error and substantial constitutional questions which go to the fundamental fairness and reliability of Mr. Medina's capital conviction and death sentence, and of this Court's appellate review. The claims should be determined on their merits. As Mr. Medina's petition demonstrates, he is entitled to the relief he seeks.



CONCLUSION

The State has said nothing to rebut Mr. Medina's entitlement to relief. The relief sought is appropriate and should be granted.


LARRY HELM SPALDING  
Capital Collateral Representative  
Florida Bar No. 0125540

MARTIN J. MCCLAIN  
Chief Assistant CCR  
Florida Bar No. 0754773

JUDITH J. DOUGHERTY  
Assistant CCR  
Florida Bar No. 0187786

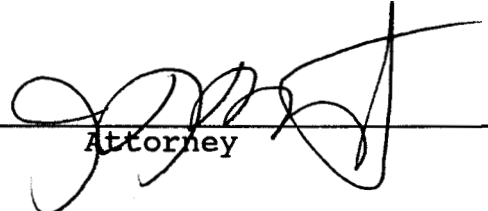
OFFICE OF THE CAPITAL COLLATERAL  
REPRESENTATIVE  
1533 South Monroe Street  
Tallahassee, Florida 32301  
(904) 487-4376

COUNSEL FOR PETITIONER

By:   
Attorney

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 Barbara Davis , Assistant Attorney General, 210 North Palmetto Avenue, Daytona Beach, Florida 32114, this day 3rd of June, 1991.

By:   
Attorney