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IN THE SUPREME COURT OF FLORIDA

AILEEN CAROL WUORNOS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NUMBER 81,059

APPEAL FROM THE CIRCUIT COURT
IN AND FOR MARION COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

AILEEN CAROL WUORNOS, Appellant, vs. STATE OF FLORIDA, Appellee.	))))))))))	CASE NUMBER 81,059

REPLY BRIEF OF APPELLANT

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT AILEEN WUORNOS' PLEAS ARE INVALID UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 9, 16, 17 AND 22 OF THE CONSTITUTION OF THE STATE OF FLORIDA.

THE PLEAS WERE NOT INTELLIGENT OR VOLUNTARY.

Appellant disagrees with the State's contention that this issue is not properly before this Court. In a capital case, the defendant is entitled to appellate review of the validity of a plea and the correctness of the court's action in accepting the plea. Trawick v. State, 473 So.2d 1235, 1238 (Fla. 1985). The defendant is entitled to raise a claim that the record fails to show that the plea was intelligent and voluntary on direct appeal in a capital case, despite the absence of a motion to withdraw the plea in the trial court. This Court is required by Section

921.141(4), Florida Statutes (1991) to review the judgment of conviction, and this requires review of the propriety of the plea. Koenig v. State, 597 So.2d 256, 257 n.2 (Fla. 1992).

The State contends that Appellant takes a "leap in logic" by relying on her statements at the later penalty phase to support her reasoning at the time of her plea. (AB pp. 46-47)[1] Appellant made statements at the time of her plea as well.

> ...I am not going to get a fair trial and I am not -- I just don't want to go through any more trials. (R682) [emphasis added]
>
> * * *
>
> ...I just hope I get sent back because Marion County has been doing a lot of abusing me at the County Jail, and I just want to get back to death row. (R711)
>
> * * *
>
> I will seek to be electrocuted as soon as possible. There's no sense in me suffering for something I shouldn't suffer for. I hope -- I hope I get the electric chair as soon as possible.
>
> I want to get off this crooked, evil planet. (R735)

These statements were made at the time of her pleas. Wuornos' statement that she just did not want to "go through any more trials," should have alerted the trial court that the waiver of her presence was an important consideration to Wuornos. Unfortunately, no one informed her that she had the right to be

[1] In the reply brief, counsel will refer to the State's answer brief as (AB) with the corresponding page numbers.

tried in absentia. As a result, Wuornos did not have sufficient information to intelligently enter her pleas. Hence, her pleas were involuntary, since she was never informed of, in this case, an <u>essential</u> (to her) right.

Appellant believes that the Appellee inadvertently misconstrues Appellant's indication that her treatment at the Marion County Jail was not a factor in entering her plea. (AB p. 47). Appellant told the court at the time of her pleas:

> I just hope I get sent back because Marion County has been doing a lot of abusing me at the County Jail, and I just want to get back to death row.
>
> * * *
>
> THE COURT: Wait a minute -- was that abuse in any way been targeted to try to coerce you -- coerce you or force you in any way to enter this plea?
>
> DEFENDANT: Oh, no. I mean -- I think it's for me to try to kill myself or something. I don't know what their problem is.
>
> * * *
>
> THE COURT: ...has that been a factor that you considered in deciding to enter this plea?
>
> DEFENDANT: No. I don't think they had any idea I was entering this plea. That's for sure.

(R711-12) It is clear from the above exchange that Wuornos was telling the judge that she did not believe that her treatment at the jail was a concerted effort by law enforcement to coerce her pleas. Rather, they mistreated her and she did not like it. This treatment undoubtedly played a role in Wuornos' desire to

return to Broward Correctional Institute. Anyone who has been incarcerated knows that prisons are more pleasant than local jails. Although her jailers did not intend for her treatment to be a reason to plead, it clearly was part of the equation.

The State also contends that Appellant failed to show prejudice where "his client would only plead again in the same fashion." (AB p. 48) Appellant does not believe that this Court should look down the road in an attempt to divine exactly what Wuornos would do if this Court vacates her pleas and sentences. The State asks this Court to engage in a very unusual type of harmless error analysis. Pleas to capital murder should not be subject to such an analysis and Appellant does not believe that the juris prudence of this state allows such an examination.

FAILURE TO INFORM WUORNOS OF THE MANDATORY MINIMUM SENTENCE.

Essentially, the State argues that, since Wuornos received death sentences on all counts, no prejudice is shown. This analysis fails to envision a scenario whereby Wuornos ultimately succeeds in having at least one of her death sentences reduced to life imprisonment. Since this is a distinct possibility in this era of proportionality review, the trial court's failure to inform Wuornos of the mandatory minimum (a substantial one at that) renders the pleas unintelligent and involuntary.

INSUFFICIENT FACTUAL BASIS.

Appellant contends that the cases cited in the initial brief are applicable, since Wuornos never acknowledged her guilt

and never explained **how** the pleas were in her best interest. Florida Rule of Criminal Procedure 3.172(d), requires:

> Before the trial judge accepts a guilty or nolo contendere plea, the judge must determine that the defendant either (1) acknowledges his or her guilt or (2) acknowledges that he or she feels the plea to be in his or her best interest, while maintaining his or her innocence.

Wuornos consistently maintained her innocence throughout the plea colloquy.

As the State argues on appeal and the trial court concluded, the most obvious benefit to Wuornos' pleas was the avoidance of the "jury trial process." (R742) (AB p. 54) Appellant finds it quite ironic that the only "benefit" to pleading as charged did not in fact exist. As previously pointed out, **no one** explained to Wuornos that she had the right to be tried in absentia. Hence, Wuornos obtained no benefit at all. The pleas do not comply with due process of law or this state's criminal rules of procedure.

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT FUNDAMENTAL ERROR OCCURRED WHERE THE TRIAL COURT FAILED TO SUA SPONTE ORDER A HEARING TO DETERMINE APPELLANT'S MENTAL CONDITION.

Appellant disagrees with the State that this issue should be presented to the lower court in the form of a post-conviction motion. (AB p. 54) As Appellant pointed out in the initial brief, a Pate[2] claim can and must be raised on direct appeal. James v. Singletary, 975 F.2d 1562, 1572 (11th Cir. 1992).

Additionally, counsel fails to discern the eloquence of Wuornos' statements as perceived by the Assistant Attorney General. (AB p. 57) Counsel invites this Court to read Appellant's rambling speeches and draw its own conclusions. (R653-787;T1-90)

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[2] Pate v. Robinson, 383 U.S. 375 (1966).

POINT IV

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE STATE'S USE OF HEARSAY EVIDENCE VIOLATED APPELLANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS, CONFRONTATION AND CROSS-EXAMINATION OF ADVERSE WITNESSES.

Appellant did not incorrectly tell this Court that defense counsel subsequently complained about his inability to cross-examine Barry Wuornos. (AB p. 62) Trial counsel did subsequently complain about that very problem. (T788) While the complaint was an off-the-cuff remark of counsel during the cross-examination of another witness, Appellant gave the appropriate record citation. (Initial Brief of Appellant p. 46)

Additionally, Appellant fails to understand how her statements to the trial court at the plea hearing (AB p. 62) have any bearing on an evidentiary matter occurring at the penalty phase before a jury. The jury was not present at the plea hearing to hear Appellant's statements to the trial court.

POINT VII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE DEATH SENTENCES ARE NOT JUSTIFIED WHERE THE TRIAL COURT BASED THE SENTENCES ON INAPPROPRIATE AGGRAVATING CIRCUMSTANCES AND, IN EFFECT, IGNORED VALID MITIGATING CIRCUMSTANCES.

IN ALL THREE CASES THE TRIAL COURT ERRED IN FINDING THAT THE MURDER WAS COMMITTED TO AVOID A LAWFUL ARREST.

The State falls into the very trap of which Appellant warned in the initial brief. The State takes two sentences of Appellant's statement out of context and concludes that the killings were perpetrated to eliminate witnesses. (AB pp. 69-70) Appellant reiterates that, when read in its entirety, Wuornos' statement reveals that her dominate motive for the killings was rage and revenge; not the avoidance of arrest. Even the trial court seemed unconvinced that the elimination of witnesses was Appellant's primary motive in the killings. (T812) ["I don't think it has to be the primary number one factor. I think it has to be one of them. Anyway, it's an issue for appeal."]

The State fails to respond at all to Appellant's separate assertion that the written findings of fact regarding this particular circumstance in the David Spears case are missing. (Initial Brief p. 68, n. 27) Appellant reiterates that without a contemporaneous written finding, this particular aggravating circumstance must be stricken from the consideration of David Spears' murder.

<u>**CONCLUSION**</u>

Based upon the foregoing cases, authorities, policies, and argument, as well as those set forth in the initial brief, Appellant requests the following relief:

As to Points I and II, vacate the convictions and sentences and remand for a trial;

As to Points III through VI, reverse and remand for a new penalty phase;

As to Points VII and VIII, vacate the death sentences and remand for imposition of a life sentence or, in the alternative, as to Point VIII, declare Section 921.141, Florida Statutes unconstitutional.

Respectfully submitted,

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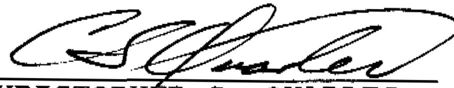
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114 in his basket at the Fifth District Court of Appeal and mailed to Ms. Aileen Carol Wuornos, #150924, P.O. Box 8540, Pembroke Pines, FL 33024, this 4th day of February, 1994.



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