

IN THE SUPREME COURT OF FLORIDA

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WILLIAM LEE STRAUSSER, JR.,)
)
Appellant,)
)
vs.)
)
STATE OF FLORIDA,)
)
Appellee.)
_____)

Case No. 84,371

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

SUPPLEMENTAL REPLY BRIEF OF APPELLEE

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WILLIAM LEE STRAUSSER, JR.,)
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 Appellant,)
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Case No. 84,371

PRELIMINARY STATEMENT

Appellant, WILLIAM LEE STRAUSSER, JR., was the defendant in the trial court below and will be referred to herein as "Appellant." Appellee, the State of Florida, was the petitioner in the trial court below and will be referred to herein as "the State." Reference to the pleadings will be by the symbol "R," reference to the transcripts will be by the symbol "T," and reference to the supplemental pleadings and transcripts will be by the symbols "SR[vol.]" or "ST[vol.]" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

The State will rely on its statement of the case and facts from its answer brief.

SUMMARY OF ARGUMENT

This Court has previously held that presentence investigation reports are recommended in capital cases when the defendant waives the presentation of mitigating evidence, but that they are not required in any case. Appellant has presented no legitimate reason for reversing his death sentence because one was not ordered in this case. Moreover, a blanket rule requiring a PSI report in every capital case would be unwise, given the potential for claims that the trial court considered inadmissible and/or unfavorable information.

ARGUMENT

ISSUE VI

THE JURY HAD NO REASONABLE BASIS TO CONCLUDE THAT LIFE WAS THE APPROPRIATE RECOMMENDATION; THEREFORE, THE TRIAL COURT'S OVERRIDE IS VALID (Restated).

In his reply brief, Appellant claims for the first time that "[t]he trial court's failure to require a presentence investigation report in this case constitutes error." **Reply Brief of Appellant** at 23 (emphasis in original). To support his contention, Appellant relies almost exclusively on Justice Anstead's special concurrence in Farr v. State, 656 So. 2d 448, 450-51 (Fla. 1995) (Anstead, J., specially concurring). Aside from stressing that his case involved a jury override, however, Appellant has presented no other factual basis to support his claim that his case was especially deserving of a PSI report, and that the absence of one mandates the reversal of his sentence.

As Appellant concedes, this Court has previously held that a trial court is not required to order and consider a PSI report, but may do so if it desires. Wuornos v. State, 20 Fla. L. Weekly S481, 482 (Fla. Sept. 21, 1995); Allen v. State, 662 So. 2d 323, 330 (Fla. 1995); Farr v. State, 656 So. 2d 448, 450 (Fla. 1995); Young v. State, 579 So. 2d 721, 725 (Fla. 1991), cert. denied, 112 S.Ct. 1198, 117 L.Ed.2d 438 (1992); Burch v. State, 522 So. 2d 810, 813

(Fla. 1988); Engle v. State, 438 So. 2d 803, 813 (Fla. 1983), cert. denied, 465 U.S. 1074 (1984). Recently, this Court has become concerned about its ability to perform proportionality review where the defendant waives his right to present mitigating evidence. As a result, it has entreated trial court's to order and consider PSI report's in such cases, but has still not made them mandatory. Farr, 656 So. 2d at 450 ("[W]e do strongly believe that trial courts would be wise to order presentence investigations in at least those cases in which the defendant essentially is not challenging imposition of the death penalty.").

In the present case, Appellant presented evidence in mitigation and is strenuously challenging his death sentence. Thus, the concerns expressed in Farr are not applicable to this case.

To the extent Appellant seeks an absolute rule that PSI reports should be ordered and considered in every capital case, the State submits that such a rule would be unwise and could cause more claims of error than it would negate. Where PSI reports have been ordered and considered, defendants have claimed reversible error based on unfavorable information in the report and on victim-impact statements. In some cases the defendant has prevailed. E.g., Gardner v. Florida, 430 U.S. 349 (1977) (where trial court considered information in PSI without informing defendant and

allowing defendant opportunity to rebut); Raulerson v. Wainwright, 508 F.Supp. 381, 383-85 (M.D. Fla. 1980); Spaziano v. State, 393 So. 2d 1119, 1122 (Fla.) (where trial court considered allegations in PSI of uncharged offenses, and nonviolent felony and misdemeanor offenses), cert. denied, 454 U.S. 1037 (1981); Dobbert v. State, 375 So. 2d 1069 (Fla. 1979), cert. denied, 447 U.S. 912 (1980); Harvard v. State, 375 So. 2d 833, 835 (Fla. 1978) (on reh'g), cert. denied, 441 U.S. 956 (1979); Funchess v. State, 367 So. 2d 1007 (Fla. 1979). In other cases, the Court has found that such information either was not objected to, was not considered by the trial court, or was harmless error. E.g., Young, 579 So. 2d at 725 (finding adult convictions in PSI considered only for noncapital offenses, and victim-impact evidence and juvenile record in PSI not considered at all); Reed v. State, 560 So. 2d 203, 207 (Fla. 1990) (finding victim-impact statement in PSI unobjected to and harmless), cert. denied, 498 U.S. 881 (1991); Parker v. Dugger, 537 So. 2d 969, 972 (Fla. 1988) (finding victim-impact statements in PSI unobjected to, not considered, and harmless); Jones v. Dugger, 533 So. 2d 290, 291-92 (Fla. 1988) (finding victim-impact statements in PSI unobjected to); Scull v. State, 533 So. 2d 1137, 1142-43 (Fla. 1988) (finding victim-impact statements in PSI unobjected to and not considered), cert. denied, 490 U.S. 1037 (1989); Grossman v. State, 525 So. 2d 833, 841-46 (Fla.) (finding

victim-impact statements in PSI unobjected to and harmless), cert. denied, 489 U.S. 1071 (1988); Stano v. State, 524 So. 2d 1018, 1019 (Fla. 1988) (finding unfavorable information in PSI considered only to support nonstatutory mitigation).

In the case of victim-impact evidence, this Court has found the trial court's mere exposure to such evidence erroneous. For example, in Grossman, the PSI contained improper victim-impact statements. Although this Court initially found the issue unpreserved, it nevertheless discussed the application of the harmless error rule. Ultimately, this Court applied the harmless error rule and found that the trial court's exposure to such information was harmless. It based its decision in part on the fact that there was not even a hint of reliance on the victim-impact evidence by the trial court in its written sentencing order.¹ Its principal conclusion, however, was that the trial court's exposure to the victim-impact evidence in the PSI report was error.

¹ In a footnote, this Court noted that "judges are routinely exposed to inadmissible or irrelevant evidence but are disciplined by the demands of the office to block out information which is not relevant to the matter at hand." 525 So. 2d at 846 n.9. However, in Scull, this Court later stated that "it is unreasonable to expect judges to excise those portions of the [PSI] report that are not proper for consideration." 533 So. 2d at 1143. For a discussion and debate among members of this Court between a trial court's "awareness" of erroneous information and its "consideration" of same, see generally Alford v. State, 355 So. 2d 108 (Fla. 1977), cert. denied, 436 U.S. 935 (1978).

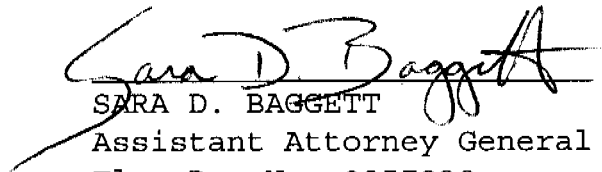
It is true that PSI reports might contain information that could be used by the trial court and/or this Court as mitigating evidence in cases where the defendant refuses to present mitigation. They may, however, and often do, contain unfavorable information about the defendant, e.g., prior criminal activities, both juvenile and adult, whether charged or not and whether resulting in a conviction or not; affiliations with disreputable groups or organizations; opinions relating to the defendant's character or veracity; opinions relating to the defendant's amenability to rehabilitation; impermissible victim-impact statements; etc. Unless the trial court is prudent enough to detail to the defendant what will be considered so that he or she has an opportunity to rebut it if desired, error will result. Similarly, unless the trial court is prudent and meticulous enough to detail on the record or in its order what it has considered and what it has not, error will result. It will then be the State's burden, and ultimately this Court's responsibility, to determine whether the trial court's exposure to such information was harmless. In close cases, the defendant will unduly benefit from a rule that requires trial courts to order and consider a PSI report in every capital case. Consequently, this Court should maintain its present course and recommend a PSI report in cases where the defendant is waiving mitigation.

CONCLUSION

Wherefore, based on the foregoing arguments and authorities, the State requests that this Honorable Court affirm Appellant's conviction and sentence of death.

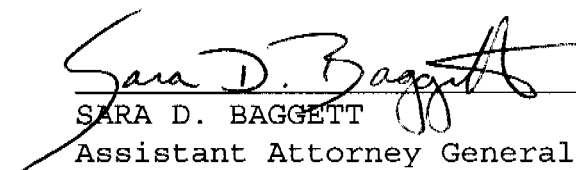
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was sent by United States mail, postage prepaid, to Richard L. Rosenbaum, Esquire, One East Broward Blvd., Suite 1500, Barnett Bank Plaza, Ft. Lauderdale, FL 33301, this 19th day of March, 1995.


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