

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 3

ARGUMENT 4

I. THE TRIAL COURT PROPERLY FOUND
EACH CLAIM TO BE PROCEDURALLY BARRED 4

 CLAIM I 5

 CLAIM II 8

 CLAIM III 9

 CLAIM IV 10

 CLAIM V 12

II. THE TRIAL COURT'S RESOLUTION OF THE
COMPETENCY ISSUES WAS CORRECT 13

CONCLUSION 18

CERTIFICATE OF SERVICE 19

TABLE OF AUTHORITIES

CASES

Agan v. State,
560 So. 2d 222 (Fla. 1990) 6

Atkins v. State,
663 So. 2d 624 (Fla. 1995) 13

Boyett v. State,
21 Fla. L. Weekly S535 (Fla., Dec. 5, 1996) 13

Bundy v. Dugger,
850 F.2d 1402 (11th Cir. 1988) 10

Coney v. State,
653 So. 2d 1009 (Fla. 1995) 13

Demps v. State,
515 So. 2d 196 (Fla. 1987) 6

Dusky v. United States,
362 U.S. 402 (1960) 14,15

Finney v. State,
660 So. 2d 674 (Fla. 1995) 12

Foster v. State,
614 So. 2d 455 (Fla. 1992) 14

Henderson v. State,
522 So. 2d 835 (Fla. 1988) 12

Henderson v. State,
617 So. 2d 313 (Fla. 1995) 12

Herrera v. Collins,
506 U.S. 390 (1993) 10

Hunter v. State,
660 So. 2d 244 (Fla. 1995) 16,18

<i>Jackson v. State</i> , 452 So. 2d 533 (Fla. 1984)	14,15
<i>James v. State</i> , 615 So. 2d 668 (Fla. 1993)	11
<i>Jones v. State</i> , 591 So. 2d 911 (Fla. 1991)	5,6,8,9
<i>Kelley v. State</i> , 569 So. 2d 754 (Fla. 1990)	12
<i>Kight v. Dugger</i> , 574 So. 2d 1066 (Fla. 1990)	13
<i>Lambrix v. State</i> , 559 So. 2d 1137 (Fla. 1990)	12
<i>Medina v. Singletary</i> , 59 F.3d 1095 (11th Cir. 1995)	11
<i>Medina v. State</i> , 573 So. 2d 292 (Fla. 1990)	13
<i>Mikenas v. State</i> , 460 So. 2d 359 (Fla. 1984)	12
<i>Spaziano v. State</i> , 570 So. 2d 289 (Fla. 1990)	8
<i>Stano v. State</i> , 497 So. 2d 1185 (Fla. 1986)	14
<i>Stewart v. State</i> , 632 So. 2d 59 (Fla. 1993)	11
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	7
<i>Sullivan v. Askew</i> , 348 So. 2d 312 (Fla. 1977)	10

<i>Turner v. State</i> , 645 So. 2d 444 (Fla. 1994)	16
<i>Watts v. State</i> , 593 So.2d 198 (Fla. 1992)	16
<i>White v. State</i> , 664 So. 2d 242 (Fla. 1995)	13
<i>White v. Singletary</i> , 663 So.2d 1324 (Fla. 1995)	10
<i>Williamson v. State</i> , 681 So. 2d 688 (Fla. 1996)	12
<i>Zeigler v. State</i> , 632 So. 2d 48 (Fla. 1993)	6,13
<i>Zeigler v. State</i> , 654 So. 2d 1162 (Fla. 1995)	5,13

MISCELLANEOUS

§922.07, Fla. Stat	2
§940.03, Fla. Stat	9
<i>F. R. Crim P.</i> , 3.811	2,3,4,14,17,18
<i>Florida Rule of Criminal Procedure</i> 3.211	14,15,17
Rule 3.850	3,9,11,14,18

PRELIMINARY STATEMENT

This brief is filed pursuant to the order of this Court directing the simultaneous filing of briefs in the above-referenced proceedings.

The records of the Orange County Circuit Court proceedings and the Bradford County competence for execution proceedings are before this Court, as are all pleadings and documents filed by the parties to this action. The State specifically relies upon, and incorporates herein by reference to the extent necessary, all pleadings heretofore filed by the State. In light of the peculiar posture of this case, which includes inextricably intertwined issues regarding Medina's competence to be executed and his competence to proceed with this 3.850 motion, the State suggests that consolidation of the competence for execution appeal with the appeal from the denial of 3.850 relief is appropriate.

STATEMENT OF THE CASE AND FACTS

On or about December 6, 1996, Medina filed a successive motion for Rule 3.850 relief in the Orange County Circuit Court. On December 2, 1996, Medina's attorney had invoked the §922.07, *Florida Statutes*, incompetence for execution provision, and the execution was stayed by the Governor on December 3, 1996; the statutorily mandated commission of psychiatrists was appointed to

determine whether Medina was competent for execution under the applicable law. On December 10, 1996, the Commission issued its report, which found that Medina was competent and was malingering.

The stay of execution was lifted on January 6, 1997, and the warrant period was established as January 27-February 3, 1997. Execution is presently scheduled for January 29. On December 6, 1996, Medina filed a motion to determine his competence to proceed with his 3.850 motion. On January 10, 1997, Medina filed a motion for judicial determination of his competence for execution under the Rule 3.811 procedure.

On January 14, 1997, Medina's motion for determination of competence to proceed with his 3.850 motion was heard by the Circuit Court. On January 15, 1997, the Court entered its order resolving that motion against Medina. Specifically, the Court found that there is no "right to competence" in post-conviction proceedings under prevailing law. However, the Court also considered the evidence offered by the parties and found that, if such a right does exist, then Medina is competent to proceed because he is competent under the 3.211/*Dusky* criteria.

On January 16, 1997, the Circuit Court denied Medina's "Motion for Stay of Execution Pending Judicial Determination of Competence for Execution" under Rule 3.811 of the *Florida Rules of Criminal*

Procedure. In that order, the Court found that, "based upon the totality of the Motion and all submissions, this Court finds that there are no reasonable grounds to believe that Defendant is insane to be executed."

On January 23, 1997, the Circuit Court entered its order denying Medina's Rule 3.850 motion. In that order, the Court found each of the claims contained in the motion to be procedurally barred. Shortly after the entry of that order, Medina filed a 13-page motion for rehearing, which was denied. This appeal follows.

SUMMARY OF THE ARGUMENT

The 3.850 trial court properly found the five claims contained in Medina's successive Rule 3.850 motion to be procedurally barred under settled Florida law. The court correctly applied the procedural bars, and that ruling should be affirmed in all respects. The 3.850 trial court also entered alternative merits rulings which are supported by the record and should also be upheld.

To the extent that Medina challenges the competency proceedings, those claims fail. As to the motion to determine competency to proceed with the 3.850 motion, Medina received a hearing that he was not entitled to under the law, on a motion which, by his own admission, had no legal basis. The trial court

allowed Medina to present affidavits in support of his position which were considered by the court in deciding the issue. Medina received more than he was entitled to receive, and his complaints are, in reality, nothing more than his dissatisfaction with the court's decision.

To the extent that Medina argues that the competence for execution motion was incorrectly decided, that claim has no merit. The trial court properly found, based upon the material submitted pursuant the Rule 3.811, that there were no reasonable grounds to believe that Medina is insane to be executed. There was no abuse of discretion, and there was no error.

ARGUMENT

I. THE TRIAL COURT PROPERLY FOUND EACH CLAIM TO BE PROCEDURALLY BARRED

In its order denying 3.850 relief, the Circuit Court found the claims contained in the petition to be procedurally barred because each claim could have been raised at trial, on direct appeal, or in Medina's first state collateral motion. Each claim, as the Circuit Court found, is successive, untimely, and an abuse of procedure. Summary denial of the claims contained in the motion is proper for the reasons set out below.

CLAIM I¹

In its order denying relief as to Claim I of the motion, the trial court found that none of the evidence which Medina claims is "newly discovered" meets the definition of such evidence under the precedent of this Court. Order at 5. *Jones v. State*, 591 So.2d 911, 916 (Fla. 1991). The trial court found as a fact that all of the evidence at issue could have been discovered at the time of trial through the exercise of due diligence and, for that reason, is time-barred. Order at 5-7. That finding is well supported by the record, is in accord with settled Florida law, and should not be disturbed. See, e.g., *Zeigler v. State*, 654 So.2d 1162 (Fla. 1995); *Zeigler v. State*, 632 So.2d 48 (Fla. 1993); *Agan v. State*, 560 So.2d 222 (Fla. 1990); *Demps v. State*, 515 So.2d 196 (Fla. 1987).

1

To the extent that Medina may argue, based upon the facts contained in his circuit court motion for rehearing, that he has "newly discovered evidence" regarding witness Michael White, that claim fails for three reasons. First, any such claim is not timely raised because such claim was known to Medina in time to be raised before the January 23, 1997 denial of 3.850 relief. Second, that "evidence" cannot be newly discovered because White has been known to Medina since his 1983 capital trial. The situation here is indistinguishable from the situation in *Mills*, and is equally meritless. That "evidence" is not newly discovered; is not material under *Brady*; and would not probably produce a different result under *Jones*. Third, it is not proper to add evidence at the appellate stage of litigations when that "evidence" existed prior to the issuance of the trial court's order.

The trial court also entered alternative findings that, even if the evidence is newly discovered (and therefore not time barred), Medina is not entitled to relief because it "would [not] probably produce an acquittal on retrial." Order at 7, citing, *Jones v. State*, 591 So.2d at 915. As the trial court found, Medina's "trial counsel ably argued that Billy Andrews was the true murderer and that he had the motive and opportunity to kill the victim." *Id.* Moreover, any argument at trial that attempted to implicate Joseph Daniels as the killer would have detracted from the argument directed at Andrews, and would have confused the jury. Likewise, whether or not the witness Arnold was told not to say anything about marijuana "joints" found in an ashtray in the victim's home would not have changed the result because, as the trial court found, that information had no relevance to the murder. Order at 8.

In summarizing the evidence against Medina, the trial court stated:

Faced with the evidence that the murder could have occurred in only a limited time period, that the Defendant was seen around the victim's apartment during that time, that no forced entry was discovered, that Defendant admitted the victim knew him and would allow him to freely enter her home, that he was in the victim's apartment after she died, that he left his hat at the scene, that he took the victim's car and attempted to sell it, and

that he was found in the car along with a knife hidden under a hubcap, the jury had no choice but to convict Defendant. And, more importantly, that choice would have been the same even if presented with the additional evidence concerning Billy Andrews, Joseph Daniels, the marijuana "joints" and other cigarettes. Accordingly, this Court finds that presentation of this allegedly newly discovered evidence would not have produced an acquittal on retrial.

Order at 8-9. To the extent that Medina may raise an ineffective assistance of counsel component as to this issue, that claim is procedurally barred under settled law, as the trial court found. *Mills, supra*. Alternatively, even ignoring the procedural bar, Medina is not entitled to relief because he cannot meet the prejudice prong of *Strickland v. Washington*, 466 U.S. 668, 189 (1984), as the trial court found. Order at 10.²

The *Brady* component of this claim is also procedurally barred because the evidence upon which it is based is not "newly discovered". Order at 10. Further, as the trial court found, even if this material is "newly discovered", the result does not change because there is no violation of *Brady* in the first place. Order at 10-11. Florida law is settled that *Brady* does not require disclosure of preliminary, discontinued investigations of all

2

The trial court did not address the performance prong because Medina could not establish prejudice.

possible suspects in a crime. *Spaziano v. State*, 570 So.2d 289 (Fla. 1990). The circuit court properly found that Medina suffered no prejudice, and that the evidence was not "newly discovered", was not material under *Brady*, and would not probably produce a different result under *Jones*.

CLAIM II

The trial court found that Claim II was procedurally because the purported "newly discovered evidence" upon which that claim is based was not "newly discovered", but was evidence that could have been discovered at the time of trial through the exercise of due diligence. Order at 11-16. All of the documents upon which this claim is based have been existence and contained within the court file of Medina's case for over ten (10) years (Order at 14) and could easily have been found by a review of that court file. This claim is procedurally barred under settled Florida law. *Mills, supra*. To the extent that a letter contained in the Department of Corrections records is at issue, that claim, as the Court found, is nothing more than an unsubstantiated allegation inasmuch as the letter has never been provided to the Court by the defendant. Order at 15. However, as the court found, "in light of the fact that this letter was contained within the Department of Corrections records, if Defendant's counsel had exercised due diligence, the letter

easily could have been found and any issue raised by its contents could have and should have been raised in Defendant's initial 3.850 motion." Order at 15. The trial court's finding that this claim is procedurally barred is in accord with settled Florida law, and should be affirmed. *Mills, supra; Bolender, supra; Zeigler, supra.*

Alternatively, the exhibits which Medina claims support this claim prove only that this claim has no basis in fact. In any event, the trial judge had the authority to hold witness Dorta as a material witness. The most that can be said about this claim is that Dorta sought, and was denied, habeas corpus relief from detention as a material witness in Medina's capital trial. Those facts do not implicate Medina's conviction and sentence. In any event, Medina suffered no prejudice. None of the "evidence" is material under *Brady*, none of the evidence is "newly discovered", and none of the evidence would probably produce an acquittal under *Jones*.

CLAIM III

The trial court denied claim III because that claim is not a claim that is cognizable in a Rule 3.850 motion. Specifically, the court found that this claim, which argues that an amendment to §940.03, *Florida Statutes*, which established a time limitation for an application for executive clemency by a capital defendant, is

not an attack on the judgment or sentence and is, therefore, not properly brought in a Rule 3.850 motion. Order at 16-17.

The law is settled that clemency is an executive function. See, e.g., *Herrera v. Collins*, 506 U.S. 390 (1993). Likewise, the law is clear that the Governor has absolute discretion to exercise the executive's pardon power, and that there is no "liberty interest" attendant to Florida's clemency procedures. See, e.g., *Sullivan v. Askew*, 348 So.2d 312 (Fla. 1977); *Bundy v. Dugger*, 850 F.2d 1402, 1423-4 (11th Cir. 1988). The clemency claim is a non-issue, and it is not cognizable in this proceeding. See, e.g., *White v. Singletary*, 663 So.2d 1324, 1325 (Fla. 1995).

CLAIM IV

In resolving Medina's "innocence of death" claim, the trial court found this *Espinosa*-based claim to be procedurally barred because trial counsel did not object at trial to the jury instructions as given, nor did trial counsel request any limiting instruction. Order at 18. See, e.g., *Stewart v. State*, 632 So.2d 59 (Fla. 1993); *James v. State*, 615 So.2d 668 (Fla. 1993). That decision is in accord with the Eleventh Circuit Court of Appeals' disposition of the same claim, wherein that Court stated:

The trial court instructed the jury with the language rejected by the Supreme Court in *Espinosa*, and the jury was not provided any narrowing instructions. Medina,

however, never requested a limiting instruction. In fact, Medina's counsel specifically approved the instructions given to the jury. Medina never raised the issue of a limiting instruction on direct appeal, in his Rule 3.850 motion for postconviction relief, or in his state habeas petition.

Although this issue was not addressed in the state courts, we hold that it would be procedurally barred because Medina did not request a limiting instruction and did not object to the instruction as given. The claim is therefore procedurally defaulted for purposes of federal habeas corpus and, as Medina failed to even suggest any cause or prejudice, this Court is precluded from addressing the merits of the claim.

Medina v. Singletary, 59 F.3d 1095, 1114 (11th Cir. 1995).

As to Medina's claim concerning the pecuniary gain aggravating circumstance, the trial court found that that claim is procedurally barred because it could have been but was not raised on direct appeal or in Medina's first post-conviction motion. Order at 19. *See, e.g., Mikenas v. State*, 460 So.2d 359 (Fla. 1984). The trial court's procedural bar findings are in accord with settled Florida law, and should be affirmed in all respects.

The trial court also entered an alternative finding that, even if the claim is not procedurally barred, it does not entitle Medina to relief because this murder is heinous, atrocious, or cruel under any definition of that aggravating circumstance. Order at 18. That finding is in accord with settled law, and should be affirmed in all respects. *See, e.g., Williamson v. State*, 681 So.2d 688 (Fla.

1996); *Finney v. State*, 660 So.2d 674 (Fla. 1995); *Henderson v. State*, 617 So.2d 313 (Fla. 1995).

CLAIM V

The trial court found Medina's fifth claim, that he was not present at the bench when peremptory strikes were exercised and that he never "ratified" the strikes made by defense counsel, to be procedurally barred because it could have been but was not raised at trial, on direct appeal, or in Medina's prior post-conviction proceedings. Order at 20. That procedural bar finding is in accord with settled Florida law, and should be affirmed. *See, e.g., Henderson v. State*, 522 So.2d 835 (Fla. 1988) (finding bar as to identical claim); *Lambrix v. State*, 559 So.2d 1137 (Fla. 1990); *Kelley v. State*, 569 So.2d 754 (Fla. 1990). To the extent that this claim includes an ineffective assistance of counsel component, the trial court correctly found that claim procedurally barred because it could have been raised in the prior postconviction proceeding. Order at 20. That is a procedural bar. *See, e.g., Kight v. Dugger*, 574 So.2d 1066 (Fla. 1990); *Medina v. State*, 573 So.2d 292 (Fla. 1990).

The trial court also entered alternative findings as to this claim in which the court applied this Court's decision in *Boyett v.*

State, 21 Fla. L. Weekly S535 (Fla., Dec. 5, 1996)³. In *Boyett*, this Court clearly stated that the rule announced in *Coney v. State*, 653 So.2d 1009 (Fla. 1995) concerning a defendant's presence at the site of the exercise of peremptory challenges is only to be applied prospectively. Order at 22. *Coney* does not apply to this case.

To the extent that Medina may argue that he was entitled to an evidentiary hearing on not only due diligence but also on the merits of the claims, that claim fails. Summary denial of the claims contained in the petition was proper. *Mills, supra*; *Bolender, supra*; See also, *White v. State*, 664 So.2d 242 (Fla. 1995); *Atkins v. State*, 663 So.2d 624 (Fla. 1995); *Zeigler v. State*, 654 So.2d 1162 (Fla. 1995); *Zeigler v. State*, 632 So.2d 48 (Fla. 1993); *Foster v. State*, 614 So.2d 455 (Fla. 1992). Each claim contained in the petition is barred by multiple procedural bars, and is properly subject to summary denial. The trial court's denial of relief should be affirmed in all respects.

II. THE TRIAL COURT'S RESOLUTION OF THE COMPETENCY ISSUES WAS CORRECT

The trial court's determinations that Medina is competent to

3

Boyett was decided the day before Medina filed his 3.850 motion.

proceed with his Rule 3.850 motion and that he is competent for execution are correct. Medina filed a motion for a determination of competency to proceed with his 3.850 motion, and called that motion for hearing. At that hearing, the psychiatrists who comprised the Governor's competency commission testified that Medina was malingering, is competent under the Rule 3.211/*Dusky* criteria, and is being competent for execution under the Rule 3.811 criteria. (TR123-26; 186-189; 245-248) The Court allowed Medina to submit affidavits in support of his position, and he should not be heard to complain because he got what he asked for.⁴ *Cf., Stano v. State*, 497 So.2d 1185 (Fla. 1986). In any event, Medina agreed to travel upon the affidavits submitted in support of this claim. (TR294)

The Circuit Court found, based upon *Jackson v. State*, 452 So.2d 533, 537 (Fla. 1984), that Medina was not entitled to a judicial determination of his competence at the post-conviction stage. However, because of the nature of the case, the Court also conducted an evidentiary hearing on the issue of Medina's

4

During the hearing, Medina argued that he was "unprepared" for the hearing because he expected the motion to be denied based on *Jackson v. State*. That argument is the functional equivalent of an admission to having filed a frivolous motion. That argument is insufficient to establish error. (TR 91; 106)

competence. At that hearing, the parties agreed that the standard to be applied in determining Medina's competence was the standard that applies at the pretrial stage--in other words, the *Dusky v. United States*, 362 U.S. 402 (1960) standard.⁵ That standard is incorporated into *Florida Rule of Criminal Procedure* 3.211.

In its order finding Medina competent to proceed, the Court summarized the evidence and testimony presented at the evidentiary hearing, as well as the post-hearing affidavits submitted by Medina.⁶ After weighing the evidence, the trial court, sitting as the fact-finder, entered the following findings of fact:

- 1) Defendant has a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding;
- 2) Defendant has a rational, as well as factual, understanding of the proceedings against him;
- 3) Defendant has the capacity to appreciate the charges or allegations against him;
- 4) Defendant has the capacity to appreciate the range and

5

Dusky requires that the defendant have a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him".

6

Medina's attorney specifically rested the case upon the affidavits. The State did not object to the Court considering those affidavits, even though valid grounds for objection exist. Inasmuch as Medina was allowed to present whatever evidence he wanted without subjecting that evidence to cross-examination, he has no basis for complaint. Stated differently, Medina got everything he asked for, and he should not be heard to complain.

- nature of the penalty of death which this Court previously ordered to be imposed upon him;
- 5) Defendant has the capacity to understand the adversary nature of the post-conviction process;
 - 6) Defendant has the capacity to disclose to counsel facts pertinent to the proceedings at issue;
 - 7) Defendant has the capacity to manifest appropriate courtroom behavior; and
 - 8) Defendant has the capacity to testify relevantly.

Those findings of fact, which were made based upon the totality of the evidence, are well supported by the evidence and should not be disturbed.

Under settled law, the ultimate decision as to competency lies with the trial court, with the reports of experts being "merely advisory to the [trial court], which itself retains the responsibility of the decision". *Hunter v. State*, 660 So.2d 244, 247 (Fla. 1995) quoting, *Muhammad v. State*, 494 So.2d 969, 973 (Fla. 1986); *Turner v. State*, 645 So.2d 444 (Fla. 1994); *Watts v. State*, 593 So.2d 198, 202 (Fla. 1992) (resolution of disputed factual issue is the responsibility of the trial court which will only be reversed on showing of abuse of discretion). When the expert reports conflict, it is the responsibility of the trial court to resolve the factual dispute. *Hunter, supra; Muhammad, supra; Turner, supra; Watts, supra*. The trial court's resolution of the competency determination will stand absent a showing of abuse of discretion. *Id.* Medina cannot show an abuse of discretion, and

the decision of the trial court should not be disturbed.

To the extent that Medina challenges the disposition of his *Florida Rule of Criminal Procedure* 3.811 motion, the State responds to that claim as follows.⁷ In denying the Rule 3.811 motion, the trial court stated:

In accordance with the provisions of rule 3.811, the Court has extensively reviewed and considered the Motion, all reports of experts that were submitted to the Governor pursuant to the statutory procedure for executive determination of sanity to be executed, and all other evidentiary material and written submissions provided by the State and counsel for Defendant.

Based upon the totality of the Motion and all submissions, this Court finds that there are no reasonable grounds to believe that Defendant is insane to be executed. Therefore, Defendant's Combined Emergency Motion for a Stay of Execution Pending Judicial Determination of Competency is denied.

That decision by the trial court, which was based upon the controverted evidence before him, was decided in accord with the procedural requirements of Rule 3.811⁸. That finding is not an abuse of discretion, *Hunter, supra*, and Medina cannot show to the

7

The standard for competence for execution is whether the defendant understands the fact of his impending execution and the reasons for it.

8

Rule 3.811 (d) and (e) state that the initial determination of the need for further proceedings is based upon the motion and the submissions of the parties. As the court stated in its order, all submissions were considered.

contrary. The trial court determined, as he was required to do by the rule, whether Medina had established "reasonable grounds to believe that the prisoner is insane to be executed", and based upon the materials upon which that threshold determination is based, found that Medina had failed to make the required showing. See, *F. R. Crim P.*, 3.811. Because Medina failed to establish "reasonable grounds", which he cannot do in the face of the finding by the Governor's commission that he is malingering, the trial court properly refused to grant a stay of execution and order additional proceedings.⁹ In any event, even if a hearing was held, the result would be the same. See pp.13-18, above.

CONCLUSION

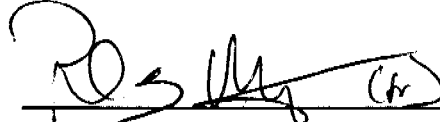
The Circuit Court correctly denied Medina's successive Rule 3.850 motion, and correctly found that Medina is competent for execution. Those findings are in accord with settled Florida law, and should not be disturbed. There is no basis for a stay of execution, and the lower court should be affirmed in all respects.

9

As the order makes clear, the trial court did not incorporate the evidence from the hearing on competence to proceed with the 3.850 motion because the Rule 3.811 standard is a threshold standard that Medina failed to meet. To the extent that further discussion is needed, it is sufficient to state that if Medina is competent under 3.211, and the court found that he is, then Medina is clearly competent for execution.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



KENNETH S. NUNNELLEY
ASSISTANT ATTORNEY GENERAL
FLA. BAR #0998818

JUDY TAYLOR RUSH
ASSISTANT ATTORNEY GENERAL
FLA. BAR #438847
444 Seabreeze Blvd. 5th FL
Daytona Beach, FL 32118
(904) 238-4990

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the above has been furnished by Fax (904) 487-1682 and U.S. Mail to Martin J. McClain, Office of the Capital Collateral Representative, Post Office Drawer 5498, Tallahassee, FL 32314-5498, on this 24th day of January, 1997.

Of counsel