IN THE SUPREME COURT OF FLORIDA

EDWARD CASTRO,

Appellant,

v. CASE NO. 91,216

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

This is an appeal from the order of the Marion County Circuit Court granting Castro's motion to discharge his CCRC attorneys, to withdraw his *Florida Rule of Criminal Procedure* 3.850 motion, and to withdraw his motion to compel the production of public records under Chapter 119 of the *Florida Statutes.* Letters written by Castro and sent to the undersigned have been filed with this Court throughout the pendency of this proceeding. Those letters leave no doubt that Castro does not want this appeal to proceed, and does not wish to challenge the rulings of the Marion County Circuit Court. Further, there is no doubt that Castro does not wish to be represented by CCRC. Because that is the case, it appears that CCRC is forcing itself on Castro despite his clearly expressed objections to such representation.

STATEMENT OF THE CASE AND FACTS

The statement of the case and facts set out on pages 1-8 of CCRC's brief is incomplete, argumentative, and fails to comply with *Florida* Rule *of Appellate Procedure* 9.210(b)(3).[1] The State does not accept the statement of the case and facts, and relies instead on the following facts, and such additional facts as are set out in

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[1] Only one record citation appears in CCRC's statement of the case and facts, contrary to the mandatory requirements of the Rules. A motion to require the filing of a proper brief would have been justified -- the State did not file such a motion because the case has been delayed long enough.

the argument section of this brief.

On or about March 20, 1996, the Capital Collateral Representative filed an unverified *Florida Rule of Criminal Procedure* 3.850 motion challenging Castro's conviction and sentence. (R1-159). On April 8, 1996, the State filed, in this Court, a "Notice of Filing/Motion for Waiver Hearing" which included various letters written by Castro to members of the Florida Attorney General's Office. (R165-188). On May 13, 1996, this Court entered an order transferring the waiver matter to the Marion County Circuit Court for purposes of conducting a hearing in accordance with *Durocher v. Singletary.* (R164).

Various pleadings were filed, and, on July 2, 1996, a hearing occurred in the Circuit Court of Marion County. (R250-386). At that hearing, CCRC presented the testimony of Dr. Jethro Toomer, who opined that Castro was not competent to discharge his counsel and waive collateral review of his conviction and sentence. (R300). The trial judge, Thomas Sawaya, determined that a further hearing would be necessary, and appointed Dr. Harry Krop as the Court's expert to evaluate Castro's competence[2]. (R372). The state was allowed to select an expert, and ultimately selected Dr. Harry McClaren. (R401).

On October 4, 1996, the second hearing began. (R493). At the commencement of that proceeding, Castro's CCR attorney announced

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[2]Dr. Krop's written report is found in the record at R417-19.

that Castro had decided to go forward with his Rule 3.850 motion, and no longer wished to discharge his counsel. (R496). The court determined that, because Doctors Krop and McClaren were present in Court, that the hearing would proceed in the event Castro had a subsequent change of position. (R507). Dr. Krop and Dr. McClaren both testified that, in their opinions, Castro was competent to waive any rights that he might choose to waive. (R511; 530). On October 17, 1996, the trial court entered an order finding that Castro was competent to waive representation and further proceedings should he choose to do so[3]. (R455-58). CCR filed a motion to disqualify Judge Sawaya on October 28, 1996. (R475).

The State responded to the motion to disqualify on October 31, 1996, (R562), and, on November 21, 1996, Judge Sawaya granted the motion to disqualify. (R590-91). In that order, Judge Sawaya pointed out his belief that the "only reason for the filing of the Motion to Disqualify is because of the dissatisfaction on the part of defense counsel with the Court's ruling on their motion for leave to submit proposed order and the Court's entry of the State's proposed order after the final hearing on October 4, 1996." (R591).

On November 21, 1996, CCR filed, on Castro's behalf, a "motion for further review", which purported to be based upon a November 5,

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[3]The state submitted a proposed order on October 7, 1996. (R448). Copies were transmitted by facsimile to all parties. CCR filed a motion for leave to submit a proposed order of their own on October 17, 1996, in which they asserted that the facsimile transmission was never received. (R451-3).

1996, letter from Castro in which he stated his desire to dismiss counsel and waive all further proceedings. (R577-87). Castro filed a pro se "motion to strike" on or about December 9, 1996, in which he expressed his desire to discharge CCR counsel and waive further review of his case. (R595-99). The trial court (Judge Singbush) granted the motion for further review and scheduled a hearing for January 21, 1997. (R601). Castro was not transported to that hearing, so it proceeded as a status conference. (R612-28). Subsequent letters written by Castro were filed with the court (R629-45; 660-66; 751-54), and, on June 24, 1997, another hearing took place. (R755-906). At the conclusion of that hearing, which included a lengthy conversation between Judge Singbush and Castro, the Court granted Castro's motion to discharge counsel (R882-91), and to dismiss his Rule 3.850 motion (R900). See also, R907-910. CCRC gave notice of appeal on August 12, 1997, purporting to represent Castro. (R923-4). Castro filed various documents stating that the appeal now pending before this Court is not authorized by him, and that CCRC does not have his permission to represent him. (R932-64). The record was certified as complete and transmitted on October 21, 1997. CCRC obtained several extensions of the briefing schedule, and ultimately filed its brief on March 24, 1998.

SUMMARY OF THE ARGUMENT

Under settled law, CCRC has no "right" to represent a defendant who does not want their services. Castro knowingly and

voluntarily waived representation by CCRC, and, because that is true, this appeal is no more than an unauthorized proceeding initiated by attorneys who do not represent Castro.

Castro was found competent at the time of his initial trial, and, based upon that determination, a presumption of competence attaches. Further, as the record of the proceedings demonstrates, Castro is unquestionably competent to represent himself. The finding of the trial court to that effect is supported by the record, is not an abuse of discretion, and should be affirmed in all respects.

CCRC's claim concerning the evidentiary hearing on Castro's competence has no basis in law or fact. The determination of a competency question is the perogative of the trial court -- it is not contingent upon the testimony of expert witnesses. Under these facts, the record of the final hearing in this cause leaves no doubt that Castro is competent. To the extent that CCRC argues that the competency findings made by Judge Sawaya are a nullity because he recused himself, there is no legal basis for that claim.

CCRC's argument that no death-sentenced inmate should ever be allowed to waive collateral attack on that sentence has no basis in law or reason. Moreover, this claim is procedurally barred because it was not raised in the trial court.

ARGUMENT

I. CCRC HAS NO "RIGHT" TO REPRESENT CASTRO

On pages 12-53 of the brief, CCRC advances various arguments in support of its claim that the trial court erred in granting Castro's motion to discharge his CCRC attorneys and to represent himself in his collateral attack proceedings. Despite CCRC's efforts to transform this appeal into a proceeding that states a cognizable basis for review, the fact is that this appeal represents an unauthorized filing by attorneys who do not represent Castro, and whose representation he has expressly rejected.

In *Durocher v. Singletary,* 623 So.2d 482 (Fla. 1993), this Court stated:

> To forestall further argument, we also hold that CCR has no standing as a "next friend" to proceed on Durocher's behalf. Although petitions may be filed by "a friendly person in the interest of the person illegally detained. ... mere volunteers who do not appear on behalf of the prisoner or show some right to represent him will not be heard." (FN6) *State ex rel. Deeb v. Fabisinski,* 111 Fla. *454,* 461, 152 So. 207, 209 (1933). To be a next friend one "must provide an adequate explanation -- such as inaccessibility, mental incompetence, or other disability -- why the real party in interest cannot appear on his own behalf." *Whitmore,* 495 U.S. at 163, 110 S.Ct. at *1727.* Moreover, a next friend has the burden "to establish the propriety of his status and thereby justify the jurisdiction of the court.' *Id.* 495 U.S. at 164, 110 S.Ct. at 1727; *Hamblen v. Dugger,* 748 F.Supp. 1497 (M.D.Fla.1990); *see Demosthenes v. Baal,* 495 U.S. 731, 110 S.Ct. 2223, 109 L.Ed.2d 762 (1990). CCR has not met this burden. As a "mere volunteer," therefore, it has no standing as a next friend of Durocher. *Cf. Whitmore;* (FN7) *Baal;* (FN8) *Brewer;* (FN9) *Lenhard, 603* F.2d 91; (FN10) *Hamblen,* 748 F.Supp. 1497; (FN11) *Evans.* (FN12)
>
> FN6. A similar rule is in effect in the

federal courts: "It was not intended that the writ of habeas corpus should be availed of, as a matter of course, by intruders or uninvited meddlers, styling themselves next friends." *Wilson v. Dixon,* 256 F.2d 536, 538 (9th Cir.1958).

FN7. Denying next friend standing to a fellow inmate.

FN8. Denying next friend standing to Baal's parents.

FN9. Denying next friend standing to Brewer's mother.

FN10. Denying next friend standing to volunteer attorneys.

FN11. Denying next friend standing to CCR.

FN12. Denying next friend standing to Evans' mother.

Durocher v. Sinqletary, 623 So.2d at 486. Despite the claims to the contrary, CCRC is no more than a volunteer who has filed a brief on behalf of an inmate who has expressly and unequivocally rejected their services. The law is clear that Castro can refuse CCRC's services if he chooses to do so, and, so long as his decision is knowing and voluntary, that decision should be respected. *Durocher, supra; see also, Sanchez-Velasco v. State, No.* 89,511 (Fla., Dec. 4, 1997).

In this case, as in *Durocher,* CCRC asserts that Castro is "incompetent" to waive collateral review of his conviction and sentence of death. In support of this claim of incompetence, CCRC complains about the "adequacy" of the "waiver hearing" conducted by

the trial court. However, noticeably absent from CCRC's brief is any argument or assertion based upon anything other than speculation.[4] In contrast, Castro, through his letters that have been filed with this Court, through his court-ordered evaluations, and through his interaction with the trial judge at the June 24, 1997 hearing, has clearly shown himself to be competent to make a knowing and voluntary waiver of his collateral proceedings, (R882-91). That decision is Castro's to make, and it is his right to decide to forego further review of his conviction and sentence if he wishes to follow that course. In Durocher, this Court echoed the holding of the Ninth Circuit Court of Appeals in *Lenhard v. Wolff,* 603 F.2d 91, 94 (9th Cir. 1979), where the concurring Judge stated:

> Bishop is an individual who, for reasons I can fathom only slightly, has chosen to forego his federal remedies. Assuming his competence, which on this record I must, he should be free to so choose. To deny him that would be to incarcerate his spirit -- the one thing that remains free and which the state need not and should not imprison.

Durocher v. Singletary, 623 So.2d at 484. The United States Supreme Court followed the Ninth Circuit's ruling, stating:

> however worthy and high minded the motives of "next friends" may be, they inevitably run the risk of making the actual defendant a pawn to be manipulated on a chessboard larger than his own case. The idea that the deliberate decision of one under sentence of death to abandon possible additional legal avenues of attack on that sentence cannot be a rational decision, regardless

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[4]When specifically asked about evidence of incompetence, the CCRC attorneys were unable to identify any such evidence for Judge Singbush. (R793-4).

> of its motive, suggests that the preservation of one's own life at whatever cost is the *summum bonum,* a proposition with respect to which the greatest philosophers and theologians have not agreed and with respect to which the United States Constitution by its terms does not speak.

Lenhard v. Wolff, 443 U.S. 1306, 1312-13, 100 S.Ct. 3, 6-7, 61 L.Ed.2d 885 (1979) (Rehnquist, J.). Castro has made his decision as clearly known as he possibly can -- that is his decision, and it should be respected.

II. CASTRO'S COMPETENCE IS NOT IN QUESTION

Throughout CCRC's brief, numerous complaints appear concerning the "inadequacy" of the October 4, 1996, "competency hearing." Those claims ignore the irreconcilable inconsistency between asserting that Castro is competent to verify a Rule 3.850 motion, but yet is incompetent to represent himself. Those positions are mutually exclusive.

Castro was found competent to stand trial at the time of the original guilt phase proceeding (R509), and, based upon that prior determination, a presumption of competence attaches. *Durocher, supra,* at 484". Moreover, CCRC's claims ignore the extensive interaction between Castro and the trial court during the June 24, 1997, proceeding. During that proceeding, Castro engaged in a lengthy discourse with the trial court, and repeatedly maintained

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"Castro was evaluated at the time of his original trial by Dr. Harry Krop, who found him competent. (R509; 797). Dr. Krop testified in the October 14, 1996, hearing about that evaluation, as well as about his subsequent evaluation of Castro. Id.

his intent to waive further review and dismiss his state post-conviction proceeding and any ancillary matters. For example, Castro stated:

> I'm completely opposed to the motions that are being heard today. They are not being filed, they are not being filed by my permission. I no longer acknowledge CCR as my representing attorneys.
>
> I just want to make it clear to the Court that the hearing that is taking place today is taking place entirely against my wishes. It is not -- it is my wish to withdraw my verification of 3.850. It is my wish to withdraw all my signatures that were -- that pertain to the Florida Chapter 319, or 119, Chapter 119's.
>
> And it's my desire, and I would like to place it on record, to -- under *Durocher versus Singletary*, to withdraw all my collateral remedies in the State level and Federal levels.

(R757-8).[6] In a statement that echoes Chief Justice Rehnquist's comments in *Lenhard*, Castro stated:

> Sir, well, the way I perceive it is that I have attorneys that are trying to represent me as incompetent merely for the fact that it suits their cause; not necessarily on a personal basis, but it serves their cause in their efforts to save other lives on Death Row.
>
> So I understand how a particular case such as myself, such as my case can set precedent for the future cases. I understand that. So -- the fight that that they make is not necessarily just for me as opposed to people on Death Row. And as I told CCR, I understand that fully.
>
> But it still -- it is still my individual **case**. And regardless of how it affects other cases, I still have individual rights as a United States citizen. I was born and raised in the United States and I know --

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[6]As Castro put it, "I have enough pride in myself today to accept my responsibilities. And if this is the sentence imposed by the State, then so be it. I'm prepared to accept it." (R783).

> Although my rights are limited today because I am a convicted felon, I still retain a limited amount of rights. And one of those rights is to choose whether I wish to be represented or not, or desire to further proceed in any legal matters.
>
> . . .

(R786-7). The trial court conducted a *Faretta* inquiry of Castro, which established that Castro is well aware of the dangers and pitfalls associated with self-representation. (R855-872; 875-76). At the conclusion of that inquiry, the trial court stated:

> THE COURT: Okay. Any other points by any party?
>
> (No response.)
>
> THE COURT: Okay. All right. Well, sir, I have to at this point make some findings. The first finding that I need to make is one that comes fairly easily. I've had an opportunity to listen to you, to watch your reaction here in court, to observe your demeanor.
>
> You have been entirely appropriate. Were you dressed in a suit instead of red and white, you would have been -- you would have presented a picture to the Court of someone who was fully versed and comfortable with his role in the courtroom.
>
> You have a good understanding of where you are and what you're doing here and you've been very courteous. Your responses to the court's inquiry, your declarations to the Court have been evidence in my mind of the fact that you are self-motivated, that you're intelligent, that you're alert, that you are conscious of the implications and ramifications, both short - and long-term, of the decisions that you make or fail to make, of the things that you do or fail to do. In fact, we've explored some of those in brief.
>
> You've explained to me your motivation for wanting to discharge your attorneys. And, again, I find that it is a legitimate reason.
>
> Interestingly, one of the statements in our Constitution

says that every natural citizen has the right to be let alone and free from unreasonable governmental intrusion, even, I suppose, in this case from folks who mean well, whose help you no longer want.

You're right, sir. You're an adult and you don't want another mommy -- that's what you've told me -- even though these people could be of great benefit to you. You're aware of that.

I find you to be of sufficient education and ability to comprehend and sufficiently experienced in criminal matters to proceed forward as you deem it to be in your best interest to do so.

You have the tools available to you in terms of resources in looking up law and you understand those resources that would be outside the confines of the tiny cell that you are in that are vast that you will no longer have access to if I grant your request.

And yet you believe it to be in your interests because it is your desire to do so, to assert your right as a man, to control your own destiny to the extent that you are able, that you wish to proceed without the benefit of those resources. Correct?

THE DEFENDANT: Correct.

THE COURT: You have told me that you are not under the influence of any drug, that you take no medications.

THE DEFENDANT: No, sir.

THE COURT: This is true?

THE DEFENDANT: This is true, yes, sir.

THE COURT: I find that that -- notwithstanding your knowledge of the dangers of self-representation, and notwithstanding all of the things that you will give up, I find that your decision to proceed pro se is freely knowingly and intelligently made, sir.

And I regret that, because these people have worked hard for you. But I believe it to be your right, as long as it is knowingly and freely and intelligently made, to discharge counsel and to proceed pro se. After all,

government works for the people and you're one of those people.

I further find that as a potential barrier to proceeding today that as to the issues raised in the discovery motion issue that counsel has made much about -- "Well, we don't think we got all of these documents" and that sort of thing -- you heard all of that?

THE DEFENDANT: Yes, sir.

THE COURT: And without regard to your declarations to the Court that you didn't even want to know about all of that stuff, probably because you were there at the time, I find that particular material does not constitute a barrier to the Court's going forward today on the motion filed by the State for a number of reasons.

First, whether or not one or more documents may have been produced in one or more boxes dating back to 1992 and what we may idly speculate may have been contained within them doesn't bear on your present ability to proceed in your own best interests, as long as you are self-motivated, as long as you're intelligent, as long as you're alert and as long as you're not suffering any mental deficiency.

You have no mental deficiency observable by the Court. A court of competent jurisdiction, this very Court has found you to be competent.

There has been no motion that would challenge the veracity or the legality of that motion in proper fashion nor have I seen cause or reason for such motion to be filed after observing you today, sir, and after having read your correspondence, and after having heard your words and testimony here today.

I might not choose to make the decision that you make here today, but it is my legal responsibility to give you the authority to make that decision, and that I do.

And for that reason and for, as I previously articulated, the reason related to the discovery matters, I'll also find for the record that there was no motion to set aside, to quash notice of this hearing so that this other matter could have been litigated first.

> It was not set down to be heard. It was just kind of thrown up there. And I don't say that to be critical, because if I were sitting next to a fellow that I didn't think was doing the right thing, boy, I would be shooting off fireworks if I could, saying: "Don't let him do it, Judge." I'd look for any reason I could.
>
> I'm going to let you discharge your attorneys, sir, and I'm going to relieve them of any further case responsibility in this cause and discharge CCR of any further obligation to represent you in any State or Federal proceeding related to this case.
>
> Now, as to the -- that means you're representing yourself.
>
> THE DEFENDANT: Correct.

(R882-886).

That in-court examination of Castro clearly established his competence to discharge his attorneys, and, because the decision of the trial court is not an abuse of discretion, it should not be disturbed. Under Florida law,

> [t]he reports of experts are "merely advisory to the [trial court], which itself retains the responsibility of the decision." Muhammad v. State, 494 So.2d 969, 973 (Fla.1986) *(quoting Brown v. State, 245* So.2d 68, 70 (Fla.1971), *vacated in part on other grounds, 408* U.S. 938, 92 S.Ct. 2870, 33 L.Ed.2d *759* (1972)), *cert. denied,* 479 U.S. 1101, 107 S.Ct. 1332, 94 L.Ed.2d 183 (1987). And, **even when the experts' reports conflict, it is the function of the trial court to resolve such factual disputes.** *Fowler v. State,* 255 So.2d 513, 514 (Fla.1971). The trial court must consider all evidence relative to competence and its decision will stand absent a showing of abuse of discretion. *Carter v. State, 576* So.2d 1291, 1292 (Fla.1989), *cert. denied, 502* U.S. 879, 112 S.Ct. 225, 116 L.Ed.2d 182 (1991).

(emphasis added) *Hunter v. State, 660* So.2d 244, 247 (Fla. 1995). Under the facts of this case, even assuming that CCR would have

found another "expert" who would opine, as did Dr. Toomer, that Castro was not "competent" to represent himself, the result does not change. Sanity *vel* non is not determined by a head-count of experts, *Hutchins v. Woddard, 730* F.2d 953, 955 (4th Cir. 1984), and, in the face of the lengthy discourse between Castro and the trial court, it is incredible to assert, as CCR does, that Castro is incompetent to represent himself. Even from a cold record, the only conclusion possible is that Castro is at least as knowledgeable about post-conviction litigation as are many attorneys, and it is equally clear that Castro's decision to forego any collateral litigation is founded firmly in reality. As Castro summarized his decision:

> I have accepted the mandate of the court to the direct appeal. Today I stand in a position where I, again, can make a choice, and my choice is to, my choice is to accept the responsibility of my actions as a man. And although it may not resonate well in the minds of others, it resonates very well in my mind. I find peace with it.

(R869). The trial court did not abuse its discretion in finding that Castro was competent to represent himself, based not only upon the prior competency determinations, but also based upon the trial Court's independent observations of Castro and the Court's interaction with him. There is no abuse of discretion, and the trial court should be affirmed in all respects.

III. THE PRIOR COMPETENCY HEARING DOES NOT CREATE AN ISSUE

In its brief, CCRC complains at length that the 1996

competency hearing before Judge Sawaya was flawed, thereby making the 1997 determination that Castro could discharge his attorneys erroneous. That argument has no basis in law or fact, and is not a basis for reversal.

As set out above, the State's position is that the only issue properly before this Court is whether Castro's decision to discharge his attorneys and represent himself was knowing and voluntary. However, because of the inordinate argument addressed to the prior hearing, that issue is addressed herein.

The basis for CCRC's argument, to the extent that it can be discerned from the brief, is that the competency hearing before Judge Sawaya is a nullity because CCRC did not have the opportunity to present the testimony of a hand-picked expert **in addition** to Dr. Toomer[7], and because Judge Sawaya ultimately disqualified himself on CCRC's motion. Neither of those claims is a basis for relief.

The law is settled that the defendant in a criminal case does not have the right to a psychiatrist of his liking, nor does he have any right to a **favorable** opinion'. *Ake v. Oklahoma, 470* U.S.

'During the hearing, CCRC counsel represented to the Court that Dr. Toomer's opinion was unchanged from his prior testimony. (R832).

[8]Of course, defense counsel has no right of any sort to **a** psychiatrist, nor does defense counsel have any right, personal to them, to present any particular testimony. CCRC's argument concerning the presentation of testimony is spurious because it has no legal basis. The issue is Castro's competence, not whether counsel wanted to present cumulative testimony.

68 (1985). Likewise, the question of competence is one that must be decided by the Court -- it is not decided based upon a head-count of expert witnesses. See page 15, above. Because that is the law, it is disingenuous to suggest that CCRC had the "right" to present yet another expert witness to testify that Castro was not competent to represent himself. Of course, Judge Sawaya heard the testimony of Dr. Toomer, as well as the testimony of the other two mental state witnesses. He was obviously able to evaluate the relative credibility of the witnesses based upon their testimony and demeanor, as well as being able to observe and interact with Castro. Based upon those factors, Judge Sawaya was able to determine that Castro is competent to represent himself if he chooses to do so. That determination was not an abuse of discretion, and should not be disturbed.

To the extent that CCRC argues that Judge Singbush should not have considered Judge Sawaya's order, no valid basis for that argument is advanced. CCRC never filed a motion to set that order aside and, in any event, Judge Sawaya's recusal from this case came after the order finding Castro competent had been entered -- there is no deficiency with that order, and it is of full force and effect.[9] Further, the record of the proceeding before Judge

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[9]Judge Sawaya granted the motion to disqualify out of an abundance of caution. (R590-591). A review of the motion establishes that it is not legally sufficient -- denial of the motion would not have been error. See, e.g., *Correll v. State, 698* So.2d 522 (Fla. 1997).

Singbush demonstrates that he evaluated and considered not only Judge Sawaya's order, but also considered his own observations of Castro. Because that is true, and because the record of the proceeding leaves no doubt that Castro is in fact competent, there is no abuse of discretion, and, therefore, no error.[10] None of the grounds for reversal advanced by CCRC are valid, and there is no basis for relief. The trial court should be affirmed in all respects[11].

IV. CASTRO'S WAIVER SHOULD NOT BE DISTURBED

On pages 46-66 of the brief, CCRC advances various reasons why Castro should not be allowed to waive collateral review of his conviction and sentence despite his clearly stated intent and desire to do so. Because "death is different", or so the argument goes, Castro should never, under any circumstances, be allowed to waive any available collateral challenge to his sentence (although he could, presumably, waive any challenge to the conviction itself). Otherwise, according to CCRC, society's interests are not protected. This argument was not raised in the trial court, and,

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[10]CCRC's claim that Judge Singbush did not make "his own" competency determination is absurd -- the record is clearly to the contrary. (R882-886).

[11]To the extent that CCRC argues that "non-compliance" with certain Chapter 119 requests renders the waiver "unknowing", that claim is frivolous. Chapter 119 does not provide a basis for failing to litigate in a timely fashion, and, in any event, Castro was well aware of the pendency of those record requests. (R882-886).

for that reason, is procedurally barred at this point. Doyle v. State, 526 So.2d 909, 911 (Fla. 1988). In addition to being barred from review, the argument is contrary to binding precedent.

In the final component of its brief, CCRC demonstrates its actual purpose in pursuing this appeal regardless of the wishes of its former client, While an effort is made to conceal the motivation behind a professed concern for "society," the true motivation appears to be avoidance of the execution of a sentence of death, regardless of Castro's willingness to accept his punishment. Because that is true, Castro has become, in the words of Chief Justice Rehnquist, "a pawn to be manipulated on a chessboard larger than his own case." *Lenhard v. Wolff, supra.* That result is both legally and morally wrong, and should not be countenanced by this Court. Castro is clearly competent to make the decision that he has made, and there is no constitutional impediment that prevents him from controlling his own destiny, at least to that extent. *See generally, Durocher, supra.* If there is no constitutional right to a post-conviction proceeding, and if there is no constitutional right to counsel in such a proceeding, and the law is clear that that is true, it makes no sense at all to suggest that an inmate under sentence of death must pursue such a proceeding at least to the extent of a challenge to the sentence. That result is absurd.

Castro spoke at length concerning the rationale and motivation

behind his decision to forego collateral review of his conviction and death sentence. Based upon the record, he is clearly competent to make that decision, and has made it knowingly and voluntarily. Whether or not CCRC agrees with Castro's decision is of no moment -- the decision does not belong to them. When the hyperbole of the CCRC brief is stripped away, all that remains is at best a "father knows best" attitude, and, at worst, an outright attempt to thwart Castro's wishes at whatever cost. Such a result is wrong, because it goes beyond mere incarceration and removes Castro's last remaining vestige of freedom by incarcerating his spirit. See, *Lenhard* v. *Wolff,* 603 F.2d at 94. Castro's decision should be respected rather than being regarded as evidence that his is "incompetent." The trial court should be affirmed in all respects.

CONCLUSION

Wherefore, based upon the foregoing arguments and authorities, the State submits that the Circuit Court's finding that Castro was competent to discharge his CCRC attorneys should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to Sylvia W. Smith, Assistant CCRC - Northern Region, 1533-B South Monroe Street, Tallahassee, Florida 32301, this 18 day of May, 1998.

Of Counsel