IN THE SUPREME COURT OF FLORIDA

SC99-32

CASE NO. ~~99,435~~

THOMAS H. PROVENZANO,

Appellant,

V.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR BRADFORD COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

MICHAEL P. REITER
Chief Assistant CCRC
Florida Bar No. 0320234

CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE
3801 Corporex Park, Suite 210
Tampa, Florida 33619
(813) 740-3544

COUNSEL FOR APPELLANT

PRELIMINARY STATEMENT

This proceeding involves the appeal of the circuit court's order declaring that Mr. Provenzano is competent to be executed. The motion was brought pursuant to Fla. R. Crim. P. 3.811 and3.812.

The following symbols will be used to designate references to the record in the instant case:

"PR" --; Record on appeal for hearing conducted from August 3 1 through September 2, 1999.

"PR1" --; Record on appeal for hearing conducted October 11 through 13, 1999, and November 15 and 16, 1999.

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ARGUMENT

THE TRIAL COURT ERRED IN APPLYING THE STANDARD TO BE UTILIZED TO DETERMINE COMPETENCY TO BE EXECUTED.

On page 38 of the Appellee's Answer Brief, the state argues that Appellant makes no claim that the trial court's factual findings are not supported by the evidence. Appellee's assertion is erroneous. It is precisely the trial court's incorrect factual finding that Mr. Provenzano **possess** a **dual belief** system which led to the trial court's incorrect application of the standard contained in Fla.R.Crim.P. 3.811.

The trial court in its order stated: "Furthermore, and most importantly, Dr. Dee's testimony about Provenzano's dual belief system helped this Court narrow the issue to be decided." [PR1 109-1 IO]. Also, the trial court specifically stated: **"The Court is presented with a set of parallel beliefs that are in conflict."** [PR1 112][emphasis added]. The idea of a "dual belief system" is entirely an invention of the court. Appellee also argues that Provenzano suffers from a dual belief system:

> As found by the trial court, Provenzano has a dual belief system that permits him to understand the fact of his death sentence and the reason for it, while also "believing" that the State is seeking to execute him because he is Jesus Christ. A careful review of the

> expert testimony suggests that these beliefs can be reconciled; in fact, Provenzano makes the connection that his death sentence is a direct consequence of his conviction for first degree murder, but he believes that the charges, trial, and conviction are all the result of a conspiracy against him as Jesus Christ.

(See Appellee's Answer Brief, P.3 1].

Again on page 33 and 34 of the Answer Brief, the state argues: "Ford did not present a case where a dual belief system created difficulty in determining the defendant's true mental state; therefore Ford's unilateral belief that he would not be executed could easily preclude a finding of competency. Such is not the case at bar."

However, as pointed out in the initial brief, Judge Bentley initiated the idea of the alleged dual belief system. Nevertheless, review of the testimony of Dr. Dee, Dr. Berland, and Dr. McClaren clearly establishes that no Doctor is of the opinion that a person can possess two conflicting beliefs on the same subject matter.

The testimony below establishes that the trial court and the state have taken the testimony of the Dr. Dee, Dr. Berland, and Dr. McClaren out of context. Although, each of these experts explained that there must be some inter-relationship or inter-twining between two conflicting positions, not one of them

ever propounded a dual belief theory, such that they acted independently of each other.

Examination of Dr. Dee:

> THE COURT: Well, let me ask you this. He also said, if I understand you, and I may be confusing some of your testimony with the other people who testified, it's also because he's innocent and also because of a conspiracy.
>
> **THE** WITNESS: **Well, I'm not sure that those are really mutually exclusive in the sense that he seemed to believe that the courtroom drama and the conviction and so forth are somehow related to his being executed for being Jesus Christ, as if that were some sort of ruse.**

[PR1 918-919] [emphasis added].

* * * *

> THE COURT: Maybe I have two questions. Let's assume for the sake of our discussion that the defendant on the one hand can recite and understand he was convicted of murder, et cetera, et cetera; on the other hand, kind of **dual channel,** believes that it's because he's Jesus Christ. That raises an interesting question as to where we stand in regard to this standard as it's worded. Do you have any comment or opinion about that?
>
> THE WITNESS: I don't think I can help, no.
>
> THE COURT: That may be a question for the lawyers. The other thing I'm struggling with, is it possible to say, based on your evaluation of the defendant, that he has a factual understanding of what he was convicted for and

what the sentence is, this is what the court said and the court did, and on the other hand he simply says I also believe I'm Jesus Christ, therefore, that's why they did it to me? Does the standard require that the defendant accept reasons the court announced or is it simply sufficient in your view that he understand what the court said, whether he buys it or not?

THE WITNESS: It would seem to me that whether – I'm going to make a distinction that maybe you weren't making – whether he buys it or not isn't particularly the relevant part. I think, as I read the Supreme Court's opinion, and the statute, it appears to me that what's behind this issue of competence to 'be executed is that it seems to be an offense to justice that a person who doesn't really appreciate why he's being put to death, and I think the continuing belief that one is being executed because one is Jesus Christ or some deity is the sort of thing they probably had in mind.

[PR1 958-959][emphasis added].

Examination of Dr. Berland:

THE COURT: Doctor, let me ask you, assuming that we have a situation in which a man has a rational factual understanding, if I can use the terms that way, of the process of conviction, vote, arguments about what the vote means, all those things that I think you mentioned in your report on the one hand, and then he has I guess an irrational failure to accept that's really what happened, he can recite it, he understands it, but he also believes that he's Jesus Christ on the other hand, where does that leave you?

THE WITNESS: Are we responding hypothetically or in terms of –

THE COURT: Let's assume that's the case. I'm not ruling that, for the sake of the record, but for the sake of discussion, let's assume that's the case here. We **have two realities.**

THE WITNESS: Well, if 1 didn't know anything else, I would assume there was some relationship between the two, but having read Dr. Lyons' testimony, it explained to me stuff I didn't know about with reference to Mr. Provenzano, and at least that testimony was that there was a relationship between two beliefs, that he understood that the machinations of the judicial system occurred and how they worked but that it was his belief that that was all a show, a ruse by the people who had this conspiracy against him since '74 to effect his imprisonment and ultimately his death. I'm sort of mixing hypothetical and real because I don't know – I don't have verification to my own satisfaction **that that's** his belief, but at least it explains a connection between his factual understanding of what has happened in the judicial process and his irrational belief about what **he** really thinks it all means.

[PR1 1072-1073][emphasis added].

By MR. REITER

Q. If I could ask you this, can an individual have two reality beliefs, two different beliefs about the same subject matter?

A. In my business, you can't say anything never can or can't happen.

Q. Is it reasonable?

A. **In my experience, you would usually expect that there is some connection between the two, that he wouldn't simply hold two independent realities that are in conflict with one another.**

[PR1 1073-1074][emphasis added].

Even Dr. McClaren indicates that the so called "dual belief system"is intertwined and not so easily separated.

Testimony of Dr. McClaren:

By MR. REITER:

Q. Well, let me ask you this question just for argument's sake. If in fact Thomas Provenzano's delusion is real to him, that he believes that the reason why he is being executed is because he's Jesus Christ, given that fact, would you be able to say then that his rational understanding would impede his ability to accept another reality of the fact that he's being executed because of shooting someone in Orange County?

,A. **It might.**

Q. So basically –

THE COURT: Let me rephrase, put the question – go back to my question. If you accepted the terms that counsel just gave you, that his delusion caused him to believe that's why he's being executed, if you found that to be factual, would that affect your opinion on the either factual understanding or rational – in fact, factual understanding?

THE WITNESS: **Well, I believe that he has them both intertwined, that his being –**

THE COURT: That's exactly **what I** want you to talk to me about.

THE WITNESS: Right. I believe that they are intertwined, that he has had the idea that he is Jesus Christ, but he also understands the reason that he is being executed, not punished in some other way, is because of the homicide.

THE COURT: Well, if you concluded that he believes, yeah, that's what the court said but my fundamental belief says that it's really because I'm Jesus Christ, and I'm oversimplifying, the court system needs to get rid of Jesus Christ, would that -what would your opinion be then, if you accepted – I know you do not, but if you did and thought he really believed that, although he rationally understood the reasons that were announced but simply it ain't so?

THE WITNESS: I **guess** that's the crux of the issue and it's just so hard to separate. My belief is that when I questioned him about this Jesus Christ delusion, that he doesn't get into it, doesn't explain it well like other men or people that have had this kind of delusion **1** have examined.

THE COURT: I understand your position and I really have two situations I at some point have to deal with; one, how far does his delusion go, **and what is** his beliefs about the reason for the sentence? And if I accept your view, then we don't get to the issue. But if I accept the other view, then I have this problem of do we have somebody who can rationally recite but really believes because of delusion that that isn't the real reason?

> Where does that leave us in relationship to the standard? If you have an opinion, fine, if you don't, that's fine too.

[PR 1 1 13 2- 113 5] [emphasis added].

It appears quite apparent that the unsupported factual finding by Judge Bentley that Mr. Provenzano suffers from a dual belief system is the primary reason that Judge Bentley poses the following question in his order:

> Is Provenzano competent to be executed if, on the one hand, he can recite with specificity the details of his trial and sentencing proceedings, understand and rationally argue these details, factually and rationally understand that he is going to be executed for killing another human being, and understand that his execution will result in his death, and on the other hand have a delusional belief that the real reason all this is happening is because he is Jesus Christ?

[PR1 111]

The incongruence in Judge Bentley's factual findings that Mr. Provenzano maintains a dual belief system -- that are in conflict -- appears to stem from the fact that Dr. McClaren doesn't believe that Mr. Provenzano's delusional belief-- that the real reason he is being executed is because he is Jesus Christ -- is real. Had Judge Bentley found the same as Dr. McClaren, the trial court's ultimate finding would have more validity. However, Judge Bentley disagreed with Dr McClaren in finding that Thomas Provenzano has proven by clear and convincing

evidence that Thomas Provenzano believes that the real reason for his execution is because he is Jesus Christ. That being the case, according to all of the doctors, Mr. Provenzano cannot logically maintain two separate conflicting belief systems on the same subject matter. They must be inter-twined or inter-related in some manner.

Therefore, the state's argument that Appellant makes no claim that the trial court made findings of fact unsupported by the record is incorrect.

Next, Appellee argues on page 30 of the Appellee's Answer Brief, that: "The testimony outlined above clearly establishes that Provenzano meets the test for competency to be executed required by Florida law and the federal constitution." The accuracy of this statement depends, however, upon which view is accepted as to how mental state is to be applied to Fla.R.Crim.P. 3.81 I's definition of insanity to be executed and what is required by that rule. Judge Bentley acknowledged that both possibilities of Provenzano's competency are reasonable when he stated:

> Provenzano's belief, if it is one that he truly holds, obviously renders him delusional, and quite possibly, insane for execution. But, the record before this Court also contains ample evidence that Provenzano is sane for execution.

[PR1 110].

There is no real dispute between the Appellant and the Appellee that Fla.R.Crim.P. 3.81 l(b) establishes the standard or definition for competency to be executed, as was described by Justice Powell in Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595 (1986)[1]. However, the Appellee argues on page 33 of Appellee's Answer Brief that Justice Powell's opinion in Ford is of no help to Appellant, because "there is no suggestion in the Ford opinion of any evidence that, despite his delusion, Ford actually understood that he faced imminent execution."

This statement by Appellee is grossly inaccurate, as the Court in Ford recited as follows:

> Counsel for Ford asked a psychiatrist who had examined Ford earlier, Dr. Jamal Amin, to continue seeing him and to recommend appropriate treatment. On the basis of roughly 14 months of evaluation, taped conversations between Ford and his attorneys, letters written by Ford, interviews with Ford's acquaintances, and various medical records, Dr. Amin concluded in 1983 that Ford suffered from "a severe, uncontrollable, mental disease which closely resembles 'Paranoid Schizophrenia With

[1]The state in their footnote 2 takes issue with Appellant's statement that Justice Powell's opinion is controlling because they believe that Justice O'Connor's opinion was more narrow. However, the state is incorrect with regard to a standard of competency to be applied. Justice O'Connor concurred with the judgment of the Court on a procedural basis, but dissented on the issue of substance. Justice O'Connor made no suggestion of any kind regarding a standard of competency.

> Suicide Potential' "- a major disorder . severe enough to substantially affect Mr. Ford's present ability to assist in the defense of his life."
>
> Ford subsequently refused to see Dr. Amin again, believing him to have joined the conspiracy against him, and Ford's counsel sought assistance from Dr. Harold Kaufman, who interviewed Ford in November 1983. Ford told Dr. Kaufman that "I know there is some sort of death penalty, but I'm free to go whenever I want because it would be illegal and the executioner would be executed." When asked if he would be executed, Ford replied: "I can't be executed because of the landmark case. I won. Ford v. State will prevent executions all over." . ..Dr. Kaufinan concluded that Ford had no understanding of why he was being executed, made no connection between the homicide of which he had been convicted and the death penalty, and indeed sincerely believed that he would not be executed because he owned the prisons and could control the Governor through mind waves.

Id. at 402-403.

* * * *

> At a single meeting, the three psychiatrists together interviewed Ford for approximately 30 minutes. Each doctor then filed a separate two- or three-page report with the Governor, to whom the statute delegates the final decision. One doctor concluded that Ford suffered, from "psychosis with paranoia" but had "enough cognitive functioning to understand the nature and the effects of the death penalty, and why it is to be imposed on him." Another found that, although Ford was "psychotic," he did "know fully what can happen to him." The third concluded that Ford had a "severe adaptational disorder," but did "comprehend his total situation including being

> sentenced to death, and all of the implications of that penalty." He believed that Ford's disorder, "although severe, seemed contrived and recently learned,." Thus, the interview produced three different diagnoses, but accord on the question of sanity as defined by state law."

Id. at 404.

Therefore, the Appellee is inaccurate when it says that there is no suggestion in the Ford opinion of any evidence that, despite his delusion, Ford actually understood that he faced imminent execution,. Rather, the three doctors appointed by the Governor all **stated** otherwise.

Admittedly, Dr. Kaufman, a private doctor who examined Ford, stated that Ford did not know the connection between his crime and **his** punishment, but sincerely **believed** that he would not be executed because he owned the prison and controlled the governor. However, Dr. Kaufman also indicated that Ford knew that there was some sort of death penalty. In the instant case, the doctors indicated **that** although Thomas Provenzano **does** know that he was charged,, convicted, **and** sentenced to death, they also indicate that he **believes** that the entire process was a ruse to kill Jesus Christ. [emphasis added].

Further, even Justice Powell expressed that in the application of the standard he announced, the inmate's "perception" of his crime and punishment and his "belief' as to the relevant issue was a crucial factor in determining sanity

to be executed. However, Appellee suggests on page 33 of the Answer Brief that Appellant's reliance on Justice Powell's opinion is of no avail because the distinction between Ford and the instant case is one of fact, and not one of law. But the ironic aspect of the state's argument is that based upon Judge Bentley's application of the law, he would have found that Justice Powell was wrong when Justice Powell stated:

> Petitioner's claim of insanity fits within this standard. According to petitioner's proffered psychiatric examination, petitioner does not know that he is to be executed, but rather believes that the death penalty has been invalidated.

Id. at 422.

We can surmise that Judge Bentley would have considered Justice Powell's finding incorrect and found Ford, competent because Judge Bentley states:

> What does the standard for competency to be executed and specifically rules 3.81 1 and 3.812 mean7 Is a rational acceptance of the reasons for execution necessary? No. Many defendants, without mental health problems, maintain their innocence though, under the facts, such a position is irrational. This can be said to be a fairly normal human reaction. The standard does not require this.
>
> Going one step further, we have a situation in which Provenzano's rejection is based on a delusional belief. The Court finds that the acceptance of the reasons for sentencing, whether rational, irrational, or delusional, is

> not part of the current standard for competency to be executed. In other words, under the current standard, acceptance of the reasons is a separate issue from a rational understanding of the process.

[PR1 113].

Given that three doctors found that Ford was able to understand the nature and effect of the death penalty and the reason why it was imposed on him, Judge Bentley would have found him competent because Mr. Ford's failure to accept that the death penalty had not been invalidated was irrelevant, regardless whether his belief was rational, irrational, or delusional' [PR1 I 13].

In the instant case, Thomas Provenzano's circumstance is even more persuasive for the conclusion of his insanity to be executed than Ford, because Judge Bentley specifically found that Thomas Provenzano has proven by clear and convincing evidence that he has a delusional belief that the real reason he is being executed is because he is Jesus Christ [PR1 113].

If, as established by clear and convincing evidence, Thomas Provenzano truly believes that the charge, trial, conviction and sentence was a ruse to kill Jesus Christ, than he cannot appreciate or "perceive the connection between his

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[2]But it is also necessary to note that Judge Bentley states that if his assessment of the standard is incorrect, than his ultimate finding is in error.

crime and **his** punishment, as described by Justice Powell in Ford, 477 U.S. at 422. [emphasis added].

Additionally, on page 33 of it's Answer Brief, Appellee states that the Appellant complains that Judge Bentley did not give sufficient weight to Provenzano's belief that the real reason for his execution is that he is Jesus Christ because Judge Bentley found that this belief did not impair Provenzano's ability to understand that the reason for his execution was his first degree murder conviction of Bailiff Wilkerson. Despite Appellee's assertion, Appellant is not complaining that Judge Bentley did not give sufficient weight to Mr. Provenzano's delusional belief, but that Judge Bentley was incorrect in finding that the delusional belief did not impair his understanding between the crime and punishment and that Judge Bentley was incorrect in finding that the standard does not require the consideration of an irrational delusional belief of acceptance. This erroneous finding was based on the fact that Judge Bentley unraveled or uninter-twined Mr. Provenzano's mental state in order to endorse his unsupported theory of a **"dual** belief system."

Appellee's argument on page 33 of their Answer Brief, that the unraveling of Mr. Provenzano's psyche is required by the Eighth Amendment, is unsupported by any legal or practical authority. In actuality, Justices Blackmun, Stevens, and

Souter specifically point out in their dissenting opinion in Herrera v. Collins, 506 U.S. 390,439, 113 S.Ct. 853 (1993) that the Court in Ford "leaves the States uncertain of their constitutional obligation." Further, the Appellee expressly stated on page 32 of their Answer Brief the following:

> The State agrees that the appropriate standard to be applied in this case must be gleaned from the requisite mental state as defined by Justice Powell in his concurring opinion in Ford v. Wainwright, 477 U.S. 399 (1986).

Nowhere within Ford could the undersigned find any statement by any Justice that the trial court is to unravel an inmate's mental state in order to determine whether that mental state falls within the standard set out in Ford. It is the contention of Appellant that a trial court must characterize the entire mental state of the inmate and then apply that mental state to the legal standard and not vice versa. Judge King in Martin v. Dugger 686 F. Supp. 1523 (SD. Fla. 1988), expressly noted, a court's requirement of "mental state" first, then "legal conclusion."

> A court, however, need not thoroughly divorce itself from considering the defendant's mental condition. To adequately apply the Dusky standard, a court must thoroughly acquaint itself with the defendant's mental condition. See United States v. Makris, 535 F.2d 899 907 (5th Cir. 1976). Once a court obtains a medical description or classification of defendant's illness, it still

> has further work to do. The court must analyze the medical and other evidence to arrive at a legal conclusion,.

Id. at 1572.

Additionally, Appellee argues on page 37 that no court has ever applied a competency standard on similar facts in the manner suggested by Provenzano. Appellant disagrees, In United States v. Blohm, 579 F. Supp. 495 (S.D. N.Y 1983), there is no doubt that the court could have found Mr. Blohm competent to stand trial if the court only utilized Mr. Blohm's cognitive abilities. However, as to the issue of Mr. Blohm's ability to understand, the court stated the following:

> Blohm has attended college, and his educational record,, his testimony and his writing demonstrate intelligence and a capacity to not only understand but to seek to manipulate the proceedings in which he is involved. He understands that charges in the, indictment against, if established, can subject him to a term of imprisonment. He does not believe he will be convicted and has stated that he sought to initiate the criminal proceeding in order to expose the conspiracy in which he believes Judge Stewart to be engaged. The issue is not his ability to understand, in the sense of being able to recite the legal consequences of certain acts, but rather to evaluate the realities of his situation in order to assist his counsel in his defense. As stated in Random House Dictionary of the English Language (1970) "understand" means to have a systematic interpretation or rationale, as in a field or

> area of knowledge: "he can repeat every rule in the book, but just doesn't understand."

Id. at 500.

* * * *

> The anomaly of the situation is that superficially, this defendant appears to be competent. Blohm accurately described the roles of the court and counsel in a criminal trial. He has produced a stream of legalistic papers that cite numerous cases and statutes, thereby displaying perhaps a better knowledge of the law than that of many criminal defendants, who have appeared in this courthouse. Blohm is obviously articulate and reasonably intelligent. On an intellectual level, then Blohm understands his current legal position quite well. in addition, both psychiatrists concluded that he was competent to stand trial.

Id. at 504.

In making its determination of Mr. Blohtn's competency to stand, trial, the court did not bifurcate or unravel Mr. Blohm's psyche, but considered his entire mental, state as it applied to the standard. This was demonstrated by the court's specific finding involving all aspects of Mr. Blohm's understanding:

> His understanding of the pending criminal proceedings is necessarily limited by his belief that there is a conspiracy against him involving a growing number of federal judges and magistrates, attorneys and others.

Id. at 505.

However, the Appellee suggests that United States v. Blohm, 579 F. Supp. 495 (S.D. N.Y. 1983) is of limited value in resolving the issue presented in the instant case, Nevertheless, this Court in Provenzano v. State, 24 Fla. L. Weekly S434 (Fla. Sept. 23, 1999), cited to Martin, 686 F.Supp. 1572 (S.D. Fla. 1988), -- as support for a requirement of rationality in the standard set out in Fla.R.Crim.P. 3.8 11 -- and Martin cites to Blohm as support for the method of analysis and application of the rationality test.

Although, both this Court in Provenzano, Id. at 11, and Judge King in Martin, Id. at 1572, suggest that Fla.R.Crim.P. 3.811 contains an element of limited rationality, the Eighth Amendment still requires that that limited rationality must take into consideration whether Mr. Provenzano's understanding is based in reality.

Despite the fact that Judge Bentley found, that Mr. Provenzano's delusional belief does not impair his factual and rational understanding of the fact that he is facing pending execution for his conviction and sentence of death for murdering Bailiff Wilkerson [PR1 115], the finding was based upon an unsupported invention of a "dual belief system." None of the doctors who testified, either for the Appellant or the Appellee, suggested that such a situation could exist. Logic

would dictate that a person cannot hold two separate beliefs that are in conflict with each other on the same subject matter.

In summary, the federal courts have not clearly articulated what specifically would constitute a violation of the Eighth Amendment regarding the standard of competency to be executed, In Ford, there were seven justices that clearly indicated that Florida violated the minimal recluirements of due process, However, only five justices indicated that Florida's substantive aspect of the competency standard violated the Eighth Amendment, Of those five, the plurality opinion by Justice Marshall indicated that the states should look to their current laws to seek a similar standard presently being used, while Justice Powell expressed, the standard which has been adopted by Florida. Since Ford, the 'United States Supreme Court has been reluctant to accept any case on the subject matter of the application of the standard of competency to be executed.

In Florida also, there has been minimal guidance with regard to how Fla.R.Crim.P. 3.8 11 is to be defined, nor as to how and which facts would be applied to that definition. In Martin v. State, S15 So.2d 189 (Fla. 1987), the first case in Florida since Ford, this Court indicated that only a factual understanding of the standard was necessary. However, most recently in Provenzano, 24 Fla. L.

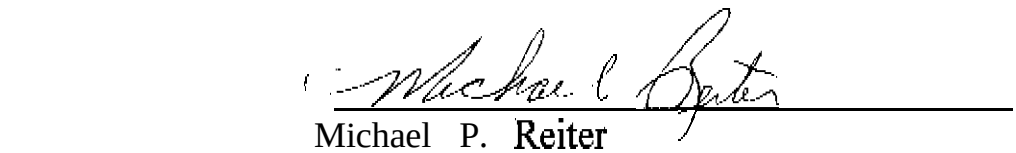
Weekly at 11, this Court receded from Martin and indicated that Fla.R.Crim.P. 3.811 does in fact contain an element of rationality, albeit a limited one.

Be that as it may, Judge Bentley was still left with the uncertainty as to what the standard includes, how is it to be applied, and how is an inmates rationality to be applied, whether limited or not. On page 37 of Appellee's Answer Brief, the state pointed, out that in all of the cases cited by Appellant, only Alvin Ford, was successful in a claim of incompetence, and that this illustrates that no other court has ever applied a competency standard on similar facts in the manner suggested by Provenzano. Although, this may be true, it is also true that no other case has ever ultimately found a defendant competent to be executed while also finding that the defendant has proven by clear and convincing evidence that the defendant truly believes that the real reason he is being executed is because he is Jesus Christ.

In this case, the trial court was in error for failing to find that Thomas Provenzano is incompetent to be executed, because Thomas Provenzano has proven by clear and convincing evidence to the trial court's satisfaction that the real reason Provenzano is being executed is because he is Jesus Christ. The "limited rationality" requirement is met by this finding.

CERTIFICATE OF FONT SIZE AND SERVICE

I HEREBY CERTIFY that a true copy of the foregoing **REPLY BRIEF OF APPELLANT**, which has been typed in *TIMES NEW ROMAN font size 14*, has been furnished by to all counsel of record by either United, States Mail, first class /federal express /facsimile transmission and/or hand delivery on February 17, 2000.



Michael P. Reiter
Florida Bar No. 0320234
Chief Assistant CCRC
CAPITAL COLLATERAL REGIONAL COUNSEL-MIDDLE
380 1 Corporex Park Drive, Suite 2 10
Tampa, Florida 33619
8 13-740-3544

Copies furnished to:

The Honorable Randolph G. Bentley
Attn. Erin O'Leary
C/O Orange County Courthouse
425 N. Orange Avenue
Orlando, Florida 32801

Kenneth Nunnelley
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118-3958

Carol Dittmar
Assistant Attorney General
Office of the Attorney General
Westwood Building, 7TH Floor
2002 North Lois Avenue
Tampa, Florida 33607

State of Florida
LAW OFFICE OF THE
CAPITAL COLLATERAL REGIONAL COUNSEL MIDDLE REGION

John W. Moser, Capital Collateral Regional Counsel
Michael P. Reiter, Chief Assistant Capital Collateral Regional Counsel

February 17, 2000

Via Federal Express

The Honorable Debbie Causseaux
Acting Clerk of the Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

Re: ***State of Florida v. Thomas H. Provenzano,***
Case No. 99,435

Dear Ms. Caussaeaux:

Enclosed for immediate filing in the above-captioned case are:

1. Original and seven (7) copies of Appellant's Reply Brief of Appellant;a)

2. Disk;

3. A copy of the first and last pages of the above referenced document for return to CCRC-Middle after stamping with the date of filing;

4. A pre-addressed, stamped envelope.

Please use the enclosed CCRC-Middle pre-addressed envelope to return a copy of the first (date-stamped) and signature pages of the document to our office.

A copy has been provided to petitioner and opposing counsel of record by first class mail.

Thank you for your assistance in this matter.

Sincerely,

Michael P. Reiter
Chief Assistant CCRC

/le
Enclosure
cc: The Honorable Randolph G. Bentley, Circuit Court Judge
Kenneth Nunnelley, Assistant Attorney General
Carol Dittmar, Assistant Attorney General

3801 Corporex Park Drive • Suite 210 • Tampa, Florida 33619
813-740-3544 • (SC) 512-1000 • Fax 813-740-3554 • (SC) 512-1120