

**IN THE SUPREME COURT  
STATE OF FLORIDA**

**Case No.: SC17-2062  
Collier Case No.: 2009-CF-002298**

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**MESAC DAMAS,**

**Appellant,**

**vs.**

**STATE OF FLORIDA,**

**Appellee.**

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On Appeal from the Ninth Judicial Circuit,  
In and For Collier County, Florida

**INITIAL BRIEF**

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## **STATEMENT OF THE CASE**

A grand jury indicted Appellant, MESAC DAMAS, of murdering his wife and five children (who were all under the age of 12). (R.24-25) Appellee, STATE OF FLORIDA, gave notice of its intent to seek the death penalty. (R.39)

During a pretrial hearing, defense counsel relayed to the court that Appellant believed he had already pled guilty. (R.2823) Thereafter, Appellant explicitly waived his right to a guilt phase jury. (R.2833-2834; R.1846) Appellant then confirmed that he wished to plead guilty to all six charges. (R.2835, 2856-2859) Appellant also confirmed that he waived his right to present mitigating evidence. (R.2836) The trial court accepted his plea. (R.2871)

Appellant also waived his right to a penalty phase jury. (R.2875, 2883)

## **FARETTA HEARING**

During a pretrial hearing conducted on June 23, 2017, Mr. Damas requested that the circuit court permit him to represent himself. (R.1268) After a recess, he reiterated the request: “Like I said, I would like to represent myself. I don’t want no – I would like these two gentlemen take a break [sic], remove from the case, and I would like to plead guilty right now and just give me my sentence right now.” (R.1290)

The court conducted the Faretta hearing on July 21, 2017. During the hearing, Mr. Damas repeatedly and unequivocally expressed his desire to represent himself.

(RSupp.5-8, 9-10) Mr. Damas answered the trial court's questions about his age, education, mental health, arrest record, and employment history. (RSupp.12-13) He acknowledged the severity of the charges against him, the maximum penalty, and the benefits of having counsel to assist him. (RSupp.13-19)

In a written order, the circuit court denied Mr. Damas' request to represent himself on the basis that he "failed to adequately articulate his answers to this Court's Faretta colloquy and failed to demonstrate sufficient understanding of the legal process in order to represent himself." (R.1355-1357)

### **SENTENCING ORDER**

Ultimately, the trial court sentenced Mr. Damas to death. (R.2040) The court found a total of five aggravating factors:

1. Mr. Damas was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person (Fla. Stat. § 921.141(6)(b)) (R.2062);
2. The capital felony was especially heinous, atrocious, or cruel (Fla. Stat. § 921.141(6)(h) (R.2062);
3. The capital felony was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (Fla. Stat. § 921.141(6)(i) (R.2067);

4. The victim of the capital felony was a person less than 12 years of age (Fla. Stat. § 921.141(6)(l) (R.2070); and
5. The victim of the capital felony was particularly vulnerable due to the advanced age or disability, or because the defendant stood in a position of familiar or custodial authority over the victim (Fla. Stat. §921.141(6)(m) (R.2071).

As for mitigating factors, the trial court summarized: it was possible Mr. Damas suffered from untreated mental illness or had brain abnormalities that could have impaired his judgment; he came from a background of poverty, domestic violence, parental abandonment, and family religious tension; he has positive qualities; he would be controlled and productive if sentenced to life imprisonment; and his family would be adversely impacted by his execution. (R.2078)

But in evaluating proportionality, the trial court found that the “aggravating factors proven beyond a reasonable doubt in this case outweigh the mitigating circumstances reasonably established by the evidence and warrant that the Defendant, Mesac Damas, be sentenced to death.” Given the facts and circumstances, the trial court found that a sentence of death would not be disproportionate punishment. (R.2078-2079)

This direct appeal of judgment and sentence now follows. (R.2081)

## **SUMMARY OF THE ARGUMENT**

First, the trial court deprived Mr. Damas of his constitutional right to self-representation when it denied his request to represent himself on the basis that he “failed to adequately articulate his answers to the Court’s Faretta colloquy and failed to demonstrate sufficient understanding of the legal process in order to represent himself.” The trial court abused its discretion by denying Mr. Damas’ attempt to exercise his constitutional right to represent himself by focusing on Mr. Damas’ ability to represent himself rather than on whether his election to do so was knowing and intelligent.

Second, the trial court fundamentally erred by finding the existence of two aggravating circumstances where both aggravators were based upon the tender ages of the child victims. The fact that the child victims were in the familial custody of Mr. Damas (Fla. Stat. § 921.141(6)(m)) and that the child victims were less than the age of 12 (Fla. Stat. § 921.141(l)) both relied on the fact that the victims were young in age and particularly vulnerable due to that age.

Finally, the trial court violated Mr. Damas’ Eighth Amendment rights by sentencing him to death because capital punishment is inherently cruel and unusual punishment.

## ARGUMENT

**I. FARETTA HEARING: Under the Sixth Amendment, the trial court deprived Mr. Damas of his constitutional right to self-representation when it denied his request to represent himself on the basis that he “failed to adequately articulate his answers to the Court’s Faretta colloquy and failed to demonstrate sufficient understanding of the legal process in order to represent himself.”**

During a pretrial hearing on June 23, 2017, Appellant, MESAC DAMAS, requested that the circuit court permit him to represent himself. (R.1268) After a recess, he reiterated the request: “Like I said, I would like to represent myself. I don’t want no – I would like these two gentlemen take a break [sic], remove from the case, and I would like to plead guilty right now and just give me my sentence right now.” (R.1290)

The court conducted the Faretta<sup>1</sup> hearing on July 21, 2017. During the hearing, Mr. Damas repeatedly and unequivocally expressed his desire to represent himself. (RSupp.5-8, 9-10) Mr. Damas answered the trial court’s questions about his age, education, mental health, arrest record, and employment history. (RSupp.12-13) He acknowledged the severity of the charges against him, the maximum penalty, and the benefits of having counsel to assist him. (RSupp.13-19)

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<sup>1</sup> Faretta v. California, 422 U.S. 806, 836 (1975).

In a written order, the circuit court denied Mr. Damas' request to represent himself on the basis that he failed to answer the court's questions and failed to demonstrate that he understood the legal process:

The Court finds that Defendant failed to adequately articulate his answers to the Court's *Faretta* colloquy and failed to demonstrate sufficient understanding of the legal process in order to represent himself. In response to the Court's *Faretta* questions, the Defendant would not adequately respond, except to repeatedly state that he didn't want a trial and just wanted to plead guilty. The Court responded that before any plea could be accepted, the Court would have to conduct an extensive plea colloquy. It was apparent to the Court that the Defendant could not understand the plea process and related matters involved in a death penalty case without the assistance of counsel.

(R.1356)

**Law:** A trial court's decision on a request for self-representation is reviewed for abuse of discretion. *Aguirre-Jarquin v. State*, 9 So. 3d 593, 602 (Fla. 2009).

Under the Sixth Amendment, a criminal defendant has a constitutional right to act as his own lawyer and conduct his own defense. *Faretta v. California*, 422 U.S. 806, 836 (1975). The choice to invoke this right "must be honored out of 'that respect for the individual which is the lifeblood of the law.'" *Id.* at 834 (quoting *Illinois v. Allen*, 397 U.S. 337, 350-51 (1970)).

"Before the trial court can make a decision whether to permit the defendant to proceed pro se, the defendant's request for self-representation must be unequivocal." *Tennis v. State*, 997 So. 2d 375, 377-78 (Fla. 2008). "Under *Faretta*, '[t]he test is not whether the defendant is competent to represent himself adequately, but whether

he is competent to make the decision to represent himself.” Smith v. State, 956 So. 2d 1288, 1289 (Fla. 4th DCA 2007) (quoting Wilson v. State, 724 So. 2d 144, 145 (Fla. 1st DCA 1998)); see also Fla. R. Cim. P. 3.111(d)(3) (2017).

A defendant is not required to articulate a reason to invoke self-representation. Laramee v. State, 90 So. 3d 341, 345 (Fla. 4th DCA 2012). Further, a trial court abuses its discretion in denying a defendant’s attempt to exercise his constitutional right to self-representation where it focuses on whether the defendant is capable of representing himself rather than whether his election to do so is knowingly and intelligently made under Rule 3.111(d)(3). Thompson v. State, 37 So. 3d 939 (Fla. 2d DCA 2010).

**Argument:** In this case, the trial court abused its discretion by denying Mr. Damas’ request to represent himself on the basis that he “failed to adequately articulate his answers to the Court’s *Faretta* colloquy and failed to demonstrate sufficient understanding of the legal process in order to represent himself.” See R.1356.

Contrary to the trial court’s finding, Mr. Damas answered all of the questions asked during the colloquy:

THE COURT: For the third time, the question is: How old are you?

MR. DAMAS: Forty years old, sir.

THE COURT: Okay. Good. How far did you go in school?

MR. DAMAS: Second year in college.

THE COURT: Where did you go to college?

MR. DAMAS: Back home in Haiti.

THE COURT: Okay. Have you ever been diagnosed with any mental disease, defect, or condition?

MR. DAMAS: Nothing I know of, sir.

THE COURT: What -- tell me about your background and your experience in life. What have you done up until now, as far as work or employment?

MR. DAMAS: I don't understand that question, sir.

THE COURT: Okay. Well, were you working at the time that the --

MR. DAMAS: I always work, yeah.

THE COURT: When you were arrested?

MR. DAMAS: I always work, sir.

THE COURT: What were you doing?

MR. DAMAS: I'm a -- I'm a chef. I cook, yeah.

THE COURT: Okay. All right. How many years had you been doing that?

MR. DAMAS: Pretty much -- for a very long time. Everybody in my family, that's what we do. We all cook. My dad, my brothers, and sisters. We all cook.

THE COURT: Okay.

MR. DAMAS: We've been doing this for -- you know.

THE COURT: Have you ever been involved in any legal proceedings before this one?

MR. DAMAS: What's legal proceedings; what is that?

THE COURT: Going to court. Have you ever been charged with another crime before this one?

MR. DAMAS: No, sir.

THE COURT: This is your first alleged crime?

MR. DAMAS: Yes, sir.

THE COURT: Okay. You, of course, understand the seriousness of the charges in this case because you just said that the State is seeking the death penalty. You understand that's the -- that's the maximum penalty under the law that The Court could ever impose? Do you understand that, sir?

MR. DAMAS: To you -- to you guys I have a charge, but to me I don't have a charge.

THE COURT: Do you -- do you understand that?

MR. DAMAS: Understand what, sir?

THE COURT: That the maximum penalty is death.

MR. DAMAS: Yeah, death. I know that, yeah.

THE COURT: Okay. All right. Do you understand what the advantages are of having Mr. Shirley and Ermacora represent you?

MR. DAMAS: I'm good by myself, sir.

THE COURT: Well, they have the ability to subpoena witnesses, bring in witnesses to testify on your behalf.

MR. DAMAS: I don't want -- I don't want that to happen, sir.

...

THE COURT: Do you understand they can call witnesses on your behalf in the case?

MR. DAMAS: I don't want that, sir I don't want that to happen.

THE COURT: Okay. Well, there is two -- there's two phases to the case. There's what's called the guilt phase and there's the penalty phase. So if you're found guilty of any of these charges, The Court would then conduct what's called a sentencing hearing. And, again, that would be with a jury. And at that time your attorneys can present what's called mitigation evidence. In other words, evidence that could help explain to the jury or to The Court why you should be sentenced to life, instead of death.

MR. DAMAS: I don't want a sentence of life, sir.

THE COURT: Pardon me?

MR. DAMAS: I don't want to be sentenced to life, sir.

THE COURT: What do you want to be sentenced to death?

MR. DAMAS: Death...

(RSupp.12-17)

Contrary to the trial court's ruling, Mr. Damas answered every question the court asked. He acknowledged that he understood he faced a death sentence if convicted and acknowledged the assistance that defense counsel could provide for him. But the trial court impermissibly focused on Mr. Damas' ability to understand "the plea process and related matters involved in a death penalty..." rather than on whether Mr. Damas' invocation of his Sixth Amendment right to self-representation was knowing and intelligent. See Faretta, 422 U.S. at 834-836.

As in Thompson, the trial court abused its discretion by denying Mr. Damas' attempt to exercise his constitutional right to represent himself by focusing on Mr. Damas' ability to represent himself rather than on whether his election to do so was knowing and intelligent. See 37 So. 3d at 940; see also Smith, 956 So. 2d at 1289. Accordingly, Mr. Damas must be afforded a new penalty phase proceeding where he is afforded his Sixth Amendment right to self-representation.

**II. DOUBLING OF AGGRAVATORS: The trial court fundamentally erred by finding the existence of two aggravating circumstances where both aggravators were based upon the tender ages of the child victims.**

In sentencing Mr. Damas to death, the circuit court found the existence of five aggravators, two of which pertained to the tender age of the child victims. Specifically, the circuit court found that the victims of the capital felony were less than twelve years of age (Fla. Stat. § 921.141(6)(l)) and that Mr. Damas stood in a position of familial or custodial authority over the child victims (Fla. Stat. § 921.141(6)(m)). (R.31-32) Defense counsel did not object to this finding. But the circuit court fundamentally erred by imposing both aggravators because Subsection (l) and Subsection (m) both rely on the tender age of the victims as aggravating circumstances.

**Law:** Improper doubling occurs when aggravating factors refer to the same aspect of the crime. Lukehart v. State, 776 So. 2d 906, 925 (Fla. 2000). In Lukehart, this Court found that the trial court committed the error of improper doubling by finding two aggravating circumstances: that the capital offense was committed by a person engaged in aggravated child abuse and the victim was under the age of 12. Id. “Here, both of the challenged aggravators were based upon the victim’s status as a child, and we find that allowing the two to operate as separate aggravators does constitute the sentence error of improper doubling.” Id.

**Argument:** In this case, the tender age of the child victims constituted only one aggravating factor for the circuit court to consider rather than two. The trial court imposed two aggravators which relied on the fact that the child victims were in the familial custody of Mr. Damas (Fla. Stat. § 921.141(6)(m)) and that the child victims were less than the age of 12 (Fla. Stat. § 921.141(l)). But both of these aggravators rely on the fact that the victims were young in age and particularly vulnerable due to that age. In order for the victims to be in the “familial custody” of the defendant, then they must necessarily be under the age of 18. In light of this, a defendant who commits a capital crime against his own children will almost always start out with two aggravators against him. See Lukehart, 776 So. 2d at 925. Accordingly, the tender age of the child victims should have only accounted for one factor for the court to consider as an aggravator. See id. The circuit court fundamentally erred by finding otherwise.

In the alternative, Mr. Damas asks this Court to find ineffective assistance of counsel evident from the face of the record for failing to object to the finding of both aggravators. See Corzo v. State, 806 So. 2d 642, 645 (Fla. 2d DCA 2002) (holding that an ineffective assistance of counsel claim is cognizable on direct appeal “when the ineffectiveness is obvious on the face of the appellate record, the prejudice caused by the conduct is indisputable, and a tactical explanation for the conduct is inconceivable.”)

**III. EIGHTH AMENDMENT: Under the Eighth Amendment, the trial court violated Mr. Damas’ constitutional rights by sentencing him to death because capital punishment is inherently cruel and unusual punishment.**

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are *Life*, Liberty, and the pursuit of Happiness.” Declaration of Independence (U.S. 1776) (emphasis added).

Death is inherently cruel and unusual punishment. The framers explicitly believed that the right to Life was an “inalienable right”. See id. While the Eighth Amendment guarantees the right to be free from cruel and unusual punishment, there is no mention of death in the Bill of Rights. Rather, the plain language of the Fifth Amendment guarantees the right to life: “No person shall be held to answer for a *capital*, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...; nor shall any person be subject for the same offence to be twice put in jeopardy of *life* or limb; ... nor be deprived of *life*, liberty, or property, without due process of law...” (Emphasis added.)

Justice Thurgood Marshall wrote that he would not have hesitated to condemn the death penalty as cruel and unusual punishment but for its longstanding usage and acceptance in this country:

Death is today an unusually severe punishment, unusual in its pain, in its finality, and in its enormity. No other existing punishment is comparable to death in terms of physical and mental suffering.

Although our information is not conclusive, it appears that there is no method available that guarantees an immediate and painless death...death remains as the only punishment that may involve the conscious infliction of physical pain. In addition, we know that mental pain is an inseparable part of our practice of punishing criminals by death, for the prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death...the process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture...the onset of insanity while awaiting execution of a death sentence is not a rare phenomenon. The fate of ever-increasing fear and distress to which the expatriate is subjected can only exist to a greater degree for a person confined in prison awaiting death.

...

The contract with the plight of a person punished by imprisonment is evident. An individual in prison does not lose 'the right to have rights.' A prisoner retains, for example, the constitutional rights to the free exercise of religion, to be free of cruel and unusual punishments, and to treatment as a 'person' for purposes of due process of law and the equal protection of the laws. A prisoner remains a member of the human family. Moreover, he retains the right of access to the courts. His punishment is not irrevocable. Apart from the common charge, grounded upon the recognition of human fallibility, that the punishment of death must inevitably be inflicted upon innocent men, we know that death has been the lot of men whose convictions were unconstitutionally secured in view of later, retroactively applied, holdings of this Court. The punishment itself may have been unconstitutionally inflicted yet the finality of death precludes relief. An executed person has indeed 'lost the right to have rights.' As one 19th century proponent of punishing criminals by death declared, 'When a man is hung, there is an end of our relations with him. His execution is a way of saying, 'You are not fit for this world, take your chance elsewhere.'

Furman v. Georgia, 408 U.S. 238, 288-90 (1972), Marshall, J. concurring.

(Internal citations and quotations omitted.)

Justice Marshall penned this concurrence in 1972, basing his acceptance of

the death penalty on its longstanding usage in this country. But beginning in the following year, Justice Marshall's concerns about "human fallibility" were realized when the first of over 140 death sentences was overturned, with 24 of those occurring in Florida alone.<sup>2</sup> The average number of years between imposition of the death sentence and exoneration is 10.6 years, but sometimes as long as 30 years.

Moreover, Justice Marshall's fears over no guarantee of an "immediate and painless death" have been realized as well. See Furman, 408 U.S. 288-90. Most recently, it took almost two hours for Joseph Wood to die from lethal injection in Arizona in July 2014<sup>3</sup> and 25 minutes for Dennis McGuire to die by lethal injection in Ohio in January 2014.<sup>4</sup> Also, it took 43 minutes for Clayton Lockett to die by lethal injection in Oklahoma on April 29, 2014, spurring the United Nations High Commissioner for Human Rights to call for a ban on lethal injection as "cruel,

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<sup>2</sup> Death Penalty Information Center, "The Innocence List". Available at <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?scid=6&did=110>

<sup>3</sup> Brumfield, Ben, "Arizona execution raises questions over novel lethal injections", CNN.com, available at <http://www.cnn.com/2014/07/24/justice/lethal-injection-controversy/>

<sup>4</sup> Strauss, Gary, "Ohio killer's slow execution raises controversy", USA Today.com, available at <http://www.usatoday.com/story/news/nation/2014/01/16/ohio-killer-executed-with-new-lethal-drug-combo/4512651/>

inhuman, and degrading treatment”<sup>5</sup> violative of international law.<sup>6</sup> These recent incidents of prolonged and painful death demonstrate that the death penalty is inherently cruel punishment.

Recently, Justices Breyer and Ginsburg dissented that the death penalty constitutes cruel and unusual punishment. Glossip v. Gross, 135 S Ct. 2726, 2755-2777 (2015). Justice Breyer wrote that the death penalty is unconstitutional for four reasons:

1. First, the death penalty is cruel because of its “serious unreliability” as

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<sup>5</sup> United Nations, “UN rights office calls on US to impose death penalty moratorium after botched execution”, UN.org, available at [http://www.un.org/apps/news/story.asp?NewsID=47706#.VCGt1\\_ldX3c](http://www.un.org/apps/news/story.asp?NewsID=47706#.VCGt1_ldX3c)

<sup>6</sup> While the United States is a party to the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, these treaties do not expressly prohibit death by lethal injection. Rather, all three prohibit torture and cruel, inhuman, or degrading punishment apply to the manner in which executions are carried out. See “Preamble,” Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); ICCPR, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (“Section 6 states that “[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”); Kindler v. Canada, HRC, communication no. 470/1991, U.N. Doc. CCPR/C/48/D/470/1991 (1993) (citing Soering v. United Kingdom, European Court of Human Rights) (noting that because the ICCPR does not prohibit the imposition of the death penalty in certain limited circumstances, capital punishment is not *per se* a violation of the prohibition on torture and other cruel punishment, but rather it is necessary to consider the facts and the circumstances of each case, including personal factors regarding the condemned person, conditions on death row, and “whether the proposed method of execution is particularly abhorrent.”).

- evinced by convincing evidenced...that innocent people have been executed and “striking” evidence that it has been wrongly imposed on more than 100 innocent men and women.
2. Second, Justice Breyer found that the death penalty is also cruel because it is arbitrarily imposed, failing to meaningfully distinguish between the worst of the worst crimes and killers, while being improperly influenced by race, gender, geography, disparities in the exercise of prosecutorial discretion, insufficient resources to represent capitally charged defendants, and political pressures on elected judges.
  3. Third, Justice Breyer wrote that the death penalty is cruel because it suffers from “unconscionably long delays that undermine the death penalty’s penological purpose.” While long appeals are necessary, the result is that the punish is not carried out for decades, if at all, which undermines any retributive or deterrent value with the dehumanizing conditions of death row’s solitary confinement creating its own set of constitutional issues.
  4. Fourth, he found that the death penalty is “unusual” punishment because over 30 states have either abolished the death penalty or have abandoned executions. In nine other states, he wrote that executions are a “fairly rare event”. Meanwhile, a mere three states account for 80% of all executions in 2014.

Id. The miniscule minority of states which account for the majority of executions includes the State of Florida.<sup>7</sup>

But the cruelest aspect of a death sentence is that it extinguishes the humanity out of the human. Death “inflicted” at the hands of the State destroys an individual’s very existence and forecloses the possibility of any redemption or exoneration. See U.S. Const. amend. VIII. It is ordered by a judge and carried out at the hands of a government by the people and for the people. In essence, Death is an irrevocable punishment that turns the tables, transforming “We The People” into the role of the murderer and the convicted murderer into the victim. Even in the vilest of criminals remains a human being with basic human dignity who is worthy of the “inalienable right” to “Life.” While “We The People” may permissibly condemn our fellow man to life imprisonment, the decision of when that man departs this Earth is not ours to make.

The high rate at which innocent humans have been convicted and sentenced to death, in addition to the lengthy delays before exoneration and the recent instances of prolonged and painful death, on top of its arbitrary and capricious application, outweighs any conceivable constitutional arguments for its justification. See Glossip, 135 S. Ct. at 2755-2777 (Breyer, J. dissenting). Execution – the

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<sup>7</sup> “Execution List 2014”, Death Penalty Information Center. Available at <http://www.deathpenaltyinfo.org/execution-list-2014>

extinguishment of human life – permanently cuts off the opportunity for exoneration, irrevocably closed the door on a chance of redemption, violates Due Process, and amounts to the State-sponsored murder of human beings. A sentence of death constitutes the cruelest of all punishments and the “evolving standards of decency” dictate that it is now “unusual”. See id. By sentencing Mr. Damas to death, the trial court violated his basis “inalienable right” to “Life” and to be free from cruel and unusual punishment. See Declaration of Independence; U.S. Const. amend. VIII. Accordingly, Mr. Damas requests that this Court vacate his death sentence and hold that Section 921.141 violates the Eighth Amendment of the United States Constitution.

### **CONCLUSION**

For the foregoing reasons, Mr. Damas requests that this Court vacate his death sentence and award him any and all further relief to which he is entitled.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Office of the Attorney General, Capital Appeals Division, via electronic mail delivery on this 30<sup>th</sup> day of May 2018 to [capapp@myfloridalegal.com](mailto:capapp@myfloridalegal.com).

**CERTIFICATE OF TYPEFACE COMPLIANCE**

I certify that the lettering in this brief is Times New Roman 14-point Font and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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