IN THE SUPREME COURT OF FLORIDA

:

ANGEL SANTIAGO-GONZALEZ,

:

Appellant,

:

Case No. **SC18-806**

:

STATE OF FLORIDA,

:

Appellee.

:

On Appeal from the Circuit Court of the Eighth Judicial Circuit in and for Union County, Florida

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REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Mr. Santiago-Gonzalez, Appellant, will refer to the Appellee, the State of Florida, as "the State". The State's Answer Brief will be referred to as "AB" followed by the appropriate page number. Citations to the record will be consistent with the citations in the Initial Brief.

ARGUMENT

I. APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO DUE PROCESS, GUARANTEED BY THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND BY ARTICLE 1, SECTION 9 OF THE FLORIDA CONSTITUTION, WHERE HE ENTERED A PLEA WHILE INCOMPETENT.

The State argues that the trial court ordered a competency evaluation before Mr. Santiago-Gonzalez entered the plea because it was "prudent". (Answer Brief at 37) There is no such thing as a "prudent measures" competency evaluation. The plain language of the trial court's order explains why the court ordered two evaluations—it had a reasonable ground to believe that Mr. Santiago-Gonzalez was not competent to proceed. The trial court had to hold a competency hearing as a matter of law after it ordered competency evaluations. No meaningful retroactive

determination of competency can be made, particularly where the trial court's position on that date was that competency was "never" an issue.

The State cites four cases where this Court found other capital defendants competent to proceed despite serious mental illness diagnoses. (Answer Brief at 48) These cases contain important distinctions from the instant case. Three of the cases are postconviction appeals. Rodgers v. State, 242 So.3d 276, 280 (Fla. 2018), is a postconviction appeal where this Court would not consider additional, recent evidence of gender dysphoria not presented on direct appeal. Rodgers' competency was upheld on direct appeal because the trial court did not observe anything to suggest incompetency, the court relied on counsel's representation that the defense was not aware of a problem with competency, and Rodgers' statements to the court showed he understood the proceedings. Rodgers v. State, 3 So.3d 1127, 1132-33 (Fla. 2009). Unlike the instant case, there was no competency evaluation ordered by the trial court to evaluate Rodgers' competency.

In Dessaure v. State, 55 So.3d 478, 483 (Fla. 2010), this Court upheld Dessaure's competency due to extensive testimony from his trial attorneys at an evidentiary hearing for his postconviction claim of incompetency. In Barnes v. State, 124 So.3d 904, 912 (Fla. 2013), this Court held that Barnes' postconviction claims of incompetency were procedurally barred. In Barnes, this Court found that even if his claims were not procedurally barred, they were refuted by the record

because he represented himself after an extensive inquiry by the trial court. Id. at 913. Barnes advised the court that he had completed a year of college, taken several criminal justice courses, was a certified law clerk at the Department of Corrections, worked in the prison law library for 20 years, watched a criminal trial, and had never been treated for mental illness, although he had been diagnosed with a personality disorder. Id. at 912-13. Barnes' history is thus much different than Mr. Santiago-Gonzalez's history of severe mental illness.

In Covington v. State, 228 So.3d 49 (Fla. 2017), this Court held on direct appeal that the defendant understood the ramifications of his plea even though he was on psychiatric medications. In Covington, the defendant announced on the day of opening statements in his trial for killing his girlfriend, her young children, and the family dog that he wanted to change his pleas to guilty and waive a jury for the penalty phase. Id. at 54. That day, the trial court appointed two experts to evaluate Covington's competency to plead guilty. Id. The evaluations and the doctors' reports were completed that evening. Id. The next day, the trial court accepted his pleas after an extensive colloquy and hearing from Covington's attorney, who supported his decisions. Id.

In Covington, the plea and waiver of a penalty phase jury appears to have been a strategic decision fully supported by counsel. This makes sense given the horrific nature of the multiple murders. This is in contrast to Mr. Santiago-

Gonzalez's wavering decision, made against the advice of his attorneys. Mr. Santiago-Gonzalez's trial attorneys wanted to present his claim of self-defense from sexual assault and extensive mitigation to a jury.

As to the facts of the case, the State asserts that Dr. Meadows' report from 2010 is relevant as to whether he was competent in 2016. (Answer Brief at 39-40) A years-old report is too stale to be relevant for his mental state on the date of the plea. See In re Commitment of Reilly, 970 So.2d 453, 456 (Fla. 2d DCA 2007) (holding six-month-old evaluation "was too stale to be relevant" and "did not provide competent, substantial evidence to support the trial court's finding"). Similarly, Mr. Santiago-Gonzalez's admission that he had malingered years before his plea is too stale to be relevant.

Appellant disagrees with the State's assertion that Mr. Santiago-Gonzalez did not start court-ordered medication shortly before he entered the plea. (Answer Brief at 49) The essential treatment order request filled out by the attending psychiatrist, Dr. L. Lefler, recorded the date that Mr. Santiago-Gonzalez started court-ordered medications as July 20, 2016 in the "Date Began" section of the report. (R-3860)

Last, the State argues that defense expert witnesses Dr. Quiroga and Dr. Gold did not raise concerns over incompetence, nor challenge the competency evaluations. (Answer Brief at 50) These experts were retained for the penalty phase

mitigation, not the trial phase. They were not appointed by the trial court to perform a competency evaluation before Mr. Santiago-Gonzalez's plea.

For the remainder of this issue, Appellant relies on the argument contained in the Initial Brief.

II. THE TRIAL COURT FAILED TO SUA SPONTE ORDER NEW COMPETENCY EVALUATIONS BEFORE THE PENALTY PHASE, WHERE REASONABLE GROUNDS EXISTED TO SUGGEST APPELLANT WAS INCOMPETENT.

The State argues that there was no new, material evidence to warrant new competency evaluations before the penalty phase began. "As this Court succinctly stated in State v. Tait, 387 So.2d 338, 340 (Fla.1980), the issue is 'whether any information coming before the court before or during [remand] provided reasonable ground to believe that the defendant's mental condition was such that he was incompetent."' Rodgers v. State, 3 So.3d 1127, 1132 (Fla. 2009). Here, the trial court had new information which provided reasonable grounds to believe that Mr. Santiago-Gonzalez was incompetent for the penalty phase.

The record contains ample evidence of new information about Mr. Santiago-Gonzalez's deteriorating mental state made available to the trial judge. Assistant Warden Lukens testified that Mr. Santiago-Gonzalez was housed in a mental health unit, with daily mental health care from specially trained staff, just before the penalty phase proceeded. (S-4450-4552) The fact that the trial attorneys did not

move for a competency evaluation or move to set aside the guilty plea is not dispositive. (Answer Brief at 55-56) The trial court, under a continuing obligation to ensure competency, had knowledge of Mr. Santiago-Gonzalez harming himself to the point of hospitalization before the sentencing phase. The information is discussed by the parties on the record as they argued about where Mr. Santiago-Gonzalez would be housed during the penalty phase.

The State relies on Wuornos v. State, 644 So.2d 1012, 1017 (Fla. 1994). (Answer Brief at 56) Wuornos is distinguishable because this Court relied on defense counsel's stipulation of competency based on counsel's study of psychological evaluations and personal interaction with Wuornos. In contrast, there was no defense stipulation of Mr. Santiago-Gonzalez's competency. Even if there was a stipulation, a lawyer cannot stipulate to a client's competency. In Wuornos, this Court also reviewed the lengthy plea colloquy and Wuornos' multiple responses to find that she did not appear so irrational as to require the trial court to sua sponte order a competency evaluation. Id.

In the instant case, Mr. Santiago-Gonzalez simply responded to the court, "I'm going to wait until February then for that" when told about the schedule for the penalty phase by the trial court. (R-4500) He then said "okay" when the court told him it wanted to get the case resolved, and that the court's intention was to move forward without him if he missed court due to hurting himself. (R-4500-

4501) Contrary to the lengthy exchange in Wuornos, this brief interaction is insufficient for this Court to find that Mr. Santiago-Gonzalez was competent to proceed to the penalty phase.

In sum, the trial court had reasonable grounds to revisit Mr. Santiago-Gonzalez's competency before the penalty phase. The State characterizes his behavior as a continuation of that which had occurred for many years. (Answer Brief at 52) Due process requires more than the trial court assuming Mr. Santiago-Gonzalez's ongoing, severe mental health issues and self-mutilation were "more of the same", or relying solely on the trial attorneys to ensure competency. Due process required new competency evaluations because the record is clear that the trial court was aware of Mr. Santiago-Gonzalez's post-plea hospitalizations, self-harm, and specialized mental health prison care before proceeding with the penalty phase. For the remainder of this issue, Appellant relies on the argument contained in the Initial Brief.

III. THE TRIAL COURT FAILED TO ENTER A WRITTEN ORDER OF COMPETENCY.

The procedural requirements of Fla. R. Crim. P. 3.212(b) were required because the trial court ordered competency evaluations on June 23, 2016, due to a reasonable belief about Mr. Santiago-Gonzalez's competency after he expressed his desire to enter an open plea of guilty in a capital case. (R-200-202) As argued

in Issue I, there is no such thing a "prudent measures" order for competency evaluations. (Answer Brief at 61) Indeed, Fla. R. Crim. P. 3.210 does not authorize a trial court to order a competency evaluation in an abundance of caution or as a matter of course for certain defendants.

Regardless of the trial court's change of position at the plea hearing that competency was "never" an issue, it was an issue when the court ordered the competency evaluations. There is no judicial discretion for this issue. The rule of law is that the trial court must enter a written order of competency. For the remainder of this issue, Appellant relies on the argument contained in the Initial Brief.

IV. THE DEATH PENALTY IN APPELLANT'S CASE IS DISPROPORTIONATE.

The State relies on five death sentences upheld by this Court as proportionate. (Answer Brief at 64-67) The facts of these prison murder cases are distinguishable. They were not motivated by fear of sexual assault and the mitigation was not as profound as the childhood abuse suffered by Mr. Santiago-Gonzalez. Significantly, in three of the cases relied on by the State, the death sentence was upheld as proportionate where the defendant had committed murder before killing a fellow inmate.

In Doty v. State, 170 So.3d 731, 734 (Fla. 2015), Wayne Doty recruited another inmate to kill the victim and "[D]oty began planning the murder after the victim, Rodriguez, called Doty names and stole some tobacco from Doty approximately two weeks prior to the incident." In Doty, the two men "[c]arefully watched when the officers made their rounds to determine the best time to kill Rodriguez" and convinced him to meet in an interview room before tricking him into being tied up and committing the murder. Id. Doty had previously been convicted of another murder. Id. at 745.

In Gill v. State, 14 So.3d 946 , 950 (Fla. 2009), Gill murdered an inmate just days after he was incarcerated for the unrelated murder of a woman. In Gill, the victim was killed randomly because he happened to be placed in the same cell. Gill described planning to kill somebody to obtain the death penalty to avoid serving his life sentence. Id. at 952. Gill decided to kill his cell mate when they moved him in the same room and carried out his plan several days after making the decision. Id. This court upheld his death sentence as proportionate because the aggravators outweighed the mitigators, "[w]here no evidence tied the crime directly to Gill's mental problems or brain malformation." Id. at 965. In contrast, Mr. Santiago-Gonzalez's past trauma and sexual abuse were directly relevant to his stabbing of Mr. Burns.

In Globe v. State, 877 So.2d 663, 666 (Fla. 2004), Globe and a co-defendant had been planning to murder an inmate or correctional officer for over two weeks before the murder an inmate. In Globe, the trial court found only eleven nonstatutory mitigating circumstances and none of these mitigators were given more than "slight" or "little" weight. Id. at 677. The trial court found the mitigating factors of Globe's childhood abuse by his mother and his personality disorder were substantially less persuasive because the defense psychologist testified that Globe knew the difference between right and wrong, understood the nature and consequences of his acts, understood the criminality of his conduct, and had the capacity to conform his conduct to the requirements of the law. Id. at 676. In contrast to Globe, Dr. Gold testified that Mr. Santiago-Gonzalez was under the influence of extreme mental or emotional disturbance at the time he stabbed Mr. Burns. (T-968)

In Cox v. State, 819 So.2d 705 (Fla. 2002), an inmate was murdered over stolen money. In Cox, the defendant stabbed an inmate after finding that somebody had broken into his personal footlocker and stolen approximately $500. Id. at 709. "Upon making this discovery, Cox walked out onto the balcony of his dorm and announced that he would give fifty dollars to anyone willing to identify the thief. He also indicated that when he discovered who had stolen from him, he would stab and kill that person, and that he did not care about the consequence." Id.

Cox argued that his childhood was a mitigating factor, but the court assigned it slight weight:

> Mr. Cox only lived in his parents' home until he was approximately ten years old and his father was not present during some of this time. At age ten or eleven, Mr. Cox went to live with his grandmother, who was a very loving, comforting, and supporting influence in Mr. Cox's life. Hazel Cox, Mr. Cox's grandmother, provided Mr. Cox with a good life. She took him to church and taught him right from wrong. Furthermore, although Mr. Cox did witness some of the domestic violence that occurred between his parents, so did his siblings and they have not committed crimes over a 20–year span of time.

Id. at 722. Undoubtedly, Cox's childhood was much less traumatic than Mr. Santiago-Gonzalez's childhood filled with sexual, physical, and emotional abuse in a violent housing project.

In Kilgore v. State, 688 So.2d 895 (Fla. 1996), the prison death resulted from the demise of a relationship between inmates. In Kilgore, the defendant killed his lover, Jackson. Id. at 896. Kilgore stabbed Jackson with a homemade shank and then poured a caustic liquid onto his face and mouth after a confrontation. Id. at 896-97. When evaluating the aggravating factors, the trial court emphasized the magnitude of Kilgore's prior crimes. He had "[i]llegally entered the residence of a man and a woman and their children late at night while armed with a firearm. Mr. Kilgore shot the man to death in the presence of one of his children. Mr. Kilgore then kidnapped the woman and took her to an orange grove where he kept her the rest of the night." Id. at 900.

None of the prison murder cases cited by the State involve a sexual abuse survivor being moved by the Department of Corrections into the cell of a known sexual offender. The State argues that if Mr. Santiago-Gonzalez genuinely feared contact with Mr. Burns, he would not have requested to be moved to his cell. (Answer Brief at 67) Captain Hamilton observed the men behaving peacefully, while cleaning their cell, in a routine visit before the incident. (T-42) This testimony was consistent with Mr. Santiago-Gonzalez's version of events. It is entirely possible that he did not become fearful until hours after the transfer, at the point he believed Mr. Burns was about to sexually assault him while he was dressed only in boxer shorts.

The record about how the unauthorized transfer occurred is limited because the Department of Corrections internal investigation was unable to determine the identity of the corrections guard who moved Mr. Santiago-Gonzalez to Mr. Burns' cell. (T-169) Assuming the guard moved Mr. Santiago-Gonzalez without any knowledge of his history as a sexual assault victim or Mr. Burns' history as a sexual offender, it implies a dangerous "no questions asked" policy of moving inmates at their request. Such a transfer is unauthorized because it did not follow the protocol as set forth by Senior Inspector Ortiz. (T-158-169) Again, the facts surrounding how the two men came to be together are relevant to the proportionality analysis. But for the actions of the Department of Corrections, Mr.

Santiago-Gonzalez would not have been in a position to fear sexual assault, black out, and stab Mr. Burns.

Given the facts surrounding the stabbing and the extensive mitigation, a life sentence is the only proportionate sentence. For the remainder of this issue, Appellant relies on the argument contained in the Initial Brief.

V. THE TRIAL COURT IMPROPERLY REQUIRED A NEXUS BETWEEN MULTIPLE MITIGATING FACTORS AND THE CRIME.

Appellant respectfully disagrees with the State's statement of the issue and standard of review. (AB at 72) This issue is not a factual issue regarding the trial court's assignment of weight to mitigating factors, it is a legal issue-- the trial court's application of an incorrect standard in the weighing process. As such, a new sentencing phase is required, where the trial court must evaluate each mitigating factor without imposing a nexus requirement.

VI. THE TRIAL COURT DID NOT DETERMINE BEYOND A REASONABLE DOUBT THAT THE AGGRAVATING FACTORS OUTWEIGHED THE MITIGATING FACTORS, A REQUIREMENT TO IMPOSE A DEATH SENTENCE FOR CAPITAL MURDER.

Appellant relies on the argument contained in the Initial Brief.

VII. THE STATE DID NOT PROVE THE COLD, CALCULATED, AND PREMEDITATED AGGRAVATING FACTOR BEYOND A REASONABLE DOUBT.

Appellant relies on the argument contained in the Initial Brief.

VIII. THE STATE DID NOT PROVE THE ESPECIALLY HEINOUS ATROCIOUS OR CRUEL AGGRAVATING FACTOR BEYOND A REASONABLE DOUBT.

Appellant relies on the argument contained in the Initial Brief.

IX. APPELLANT DID NOT ENTER A PLEA TO A DEATH PENALTY-ELIGIBLE CRIME.

Appellant relies on the argument contained in the Initial Brief.

X. THE STATE COULD NOT SEEK THE DEATH PENALTY FOR APPELLANT BECAUSE FLORIDA DID NOT HAVE A CONSTITUTIONAL DEATH PENALTY STATUTE AT THE TIME.

Appellant relies on the argument contained in the Initial Brief.

CONCLUSION

For the reasons presented in the Initial Brief and this Reply Brief, this Court must vacate Mr. Santiago-Gonzalez's death sentence and remand for the imposition of a life sentence, the only lawful sentence in this case. Alternatively, this Court should vacate his involuntary guilty plea and remand to the trial court for a new trial and penalty phase. The new proceedings can only be held if Mr. Santiago-Gonzalez is competent to proceed. At the absolute minimum, this Court must remand to the trial court to enter a written order of competency.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished electronically via the Florida Courts E-filing portal to Janine Robinson , Assistant Attorney General, Capital Appeals Division, The Capitol, PL-01, Tallahassee, FL 32399-1050 and US Mail to the Appellant, Angel Santiago-Gonzalez, DC# 167241, Union CI, PO Box 1000, Raiford, FL 32083 on this July 22, 2019.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Times New Roman, 14 point.

Respectfully submittd,

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