No. SC18-1172

IN THE

Supreme Court of Florida

GARY LAWRENCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**BRIEF OF AMICUS CURIAE,
THE CAPITAL HABEAS UNIT OF THE
OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE NORTHERN DISTRICT OF FLORIDA,
IN SUPPORT OF APPELLANT GARY LAWRENCE**

Billy H. Nolas
Chief, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
(850) 942-8818
billy_nolas@fd.org
Florida Bar No. 806821

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

Rules:

UNOPPOSED REQUEST FOR LEAVE TO FILE UNDER RULE 9.370

The Capital Habeas Unit ("CHU") of the Office of the Federal Public Defender for the Northern District of Florida has moved by separate motion, unopposed, for leave to file the accompanying amicus curiae brief in support of Appellant Gary Lawrence. *See* Fla. R. App. P. 9.370. All parties have consented to the filing of the CHU's amicus brief. The Statement of Interest section of this brief, *infra*, describes the interest of the CHU and its belief that the arguments presented in the amicus curiae brief will be helpful to the Court.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Capital Habeas Unit ("CHU") of the Office of the Federal Public Defender for the Northern District of Florida was established by the Administrative Office of the United States Courts with the concurrence of the Chief Judges of the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Northern District of Florida. The CHU was formed to address recurring problems relating to the provision of meaningful defense services in Florida capital cases. The CHU advises, assists, and trains counsel in capital cases, and also represents death-sentenced prisoners in federal habeas corpus cases, and in some instances in Florida's state courts when necessary to protect federal rights.

As the institutional federal capital defender for northern Florida, the CHU has an interest in this proceeding and a helpful perspective to provide to the Court arising from the CHU's representation and consultation in the cases of numerous clients with Eighth Amendment intellectual disability claims. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Hall v. Florida*, 134 S. Ct. 1986 (2014). The CHU was granted leave by this Court to file amicus briefs in prior instances and, we believe, the Court appreciated the CHU's assistance. In addition, as appointed federal habeas corpus counsel to Mr. Lawrence, the federal judiciary's guidelines authorize the CHU to participate as amicus curiae in this capital post-conviction appeal by Mr. Lawrence.

As noted above, counsel for Mr. Lawrence and the State of Florida have consented to the filing of this amicus brief, and the amicus brief is being timely filed pursuant to Fla. R. App. P. 9.370.

SUMMARY OF ARGUMENT

The circuit court wrongly held that Mr. Lawrence cannot seek the Eighth Amendment's categorical protection against execution based on his intellectually disability due to its mistaken belief that he filed his successive Rule 3.851 motion seeking relief under *Hall v. Florida*, 134 S. Ct. 1986 (2014), three months too late. The circuit court erroneously applied a time bar without considering any of the weighty evidence Mr. Lawrence proffered indicating that he is intellectually disabled. Amicus respectfully recommends that this Court reverse the circuit court's decision.

Under *Dixon v. State*, 730 So. 2d 265 (Fla. 1999), Mr. Lawrence's motion was timely because it was filed within one year of this Court's May 4, 2017, corrected opinion in *Walls v. State*, 213 So. 3d 340 (Fla. 2016), which held that *Hall* applies retroactively to Florida post-conviction cases such as Mr. Lawrence's. In holding that Mr. Lawrence's motion was untimely, the circuit court erroneously concluded that the date of the *Walls* original mandate, and not the date of the later-issued corrected opinion in *Walls*, triggered Rule 3.851's statute of limitations. Given *Dixon*, Mr. Lawrence's counsel reasonably believed that Mr. Lawrence had one year

from the date of the corrected opinion to invoke the Eighth Amendment's categorical bar against execution. Amicus submits that, in order to clarify the meaning of *Dixon*, fulfill the mandate of *Hall* and *Atkins v. Virginia*, 536 U.S. 304 (2002), and ensure basic fairness, this Court should adopt a presumption that Rule 3.851's one-year limitation period for constitutional claims raised in successive motions begins to run from the date of this Court's mandate *or* any corrected opinion announcing retroactivity of the constitutional rule, whichever is later.

Even if this Court departs from *Dixon* and enforces an unbending rule based on the date of the mandate alone, without regard to the issuance of a later opinion in the same case, the Court should not apply such a rule retroactively. Rather, the Court should remand Mr. Lawrence's case based on his demonstrated intellectual disability and the reasonable nature of his understanding of *Dixon* in order to prevent a miscarriage of justice. Mr. Lawrence has proffered compelling evidence of his intellectual disability that, at a minimum, should afford him a hearing on whether he is ineligible for execution under the Eighth Amendment.

ARGUMENT

I. Mr. Lawrence's Eighth Amendment Claim is Timely Based on the Date of This Court's May 4, 2017, Corrected Opinion in *Walls*

The merits of Mr. Lawrence's underlying Eighth Amendment claim—which is based on significant evidence indicating that he is intellectually disabled and therefore ineligible for execution—are inextricable from the procedural issues in this

appeal and should inform this Court's ultimate decision in the case. Fundamentally, however, this is a procedural appeal about whether the circuit court correctly applied a time bar to foreclose review of Mr. Lawrence's constitutional claim. As the order below reflects, the circuit court did not consider any of Mr. Lawrence's intellectual disability evidence or arguments. Instead, the circuit court summarily denied the claim as untimely, holding that Mr. Lawrence cannot invoke the Eighth Amendment's categorical prohibition against execution because, the circuit court believed, he filed his claim approximately three months too late. This Court should reverse because Mr. Lawrence's claim was timely filed under Florida law.

The circuit court correctly identified the procedural rule regarding timely successive Fla. R. Crim. P. 3.851 filings based on new constitutional rules, but used the incorrect date in determining when the limitations period began to run. The court accurately concluded that Rule 3.851(d)(2)(B) and (e)(2) applied, and prescribed a one-year limitation period for Mr. Lawrence's claim, based on *Walls v. State*, 213 So. 3d 340 (Fla. 2016), which held that *Hall v. Florida*, 134 S. Ct. 1986 (2014), applied retroactively on collateral review in Florida. However, the circuit court incorrectly ruled that Rule 3.851's one-year limitation period began to run from the date the mandate issued in *Walls*, on January 25, 2017, rather than the date of the later-issued corrected opinion in *Walls*, which this Court released on May 4, 2017.

Based on the correct date—the May 4, 2017, corrected opinion in *Walls*—Mr. Lawrence's constitutional claim was timely filed within one year, on May 2, 2018.

The circuit court's order provided no explanation for the court's decision to select the date of the January 25 *Walls* mandate, rather than the date of the May 4 *Walls* corrected opinion, as the triggering event for the one-year limitations period. The court's order stated only the following, with no elaboration:

> The mandate in *Walls* was issued on January 25, 2017. The instant motion, however, was filed more than one year later on May 2, 2018. *See* Fla. R. Crim. P. 3.851(d)(2)(B) & (e)(2); *Hamilton v. State*, 236 So. 3d 276, 278 (Fla. 2016); *Dixon v. State*, 730 So. 2d 265, 267 (Fla. 1999).

Order at 1. However, those citations by the circuit court, if anything, undermine the conclusion that January 25 is the relevant date for the limitations period, and support using the date of the May 4 corrected opinion as the triggering event.

The provisions of Rule 3.851 cited by the circuit court do not on their face resolve the issue. Subsection (d)(2)(B) provides that constitutional claims may be filed more than one year after the defendant's judgment becomes final if the fundamental constitutional right asserted (a) was not established within that initial one-year period, and (b) has been held to apply retroactively. Here, there is no dispute that Mr. Lawrence's claim satisfied subsection (d)(2)(B) because his judgment and death sentence became final in 1998, years before the United States Supreme Court recognized in *Atkins v. Virginia*, 536 U.S. 304 (2002), that the Eighth Amendment categorically prohibits the execution of the intellectually disabled, and

subsequently ruled in *Hall* that Florida's prior procedure for determining which defendants are entitled to protection under *Atkins* was itself unconstitutional. In *Walls*, this Court held that *Hall* applies retroactively. *See Walls*, 213 So. 3d at 346.

The other provision of Rule 3.851 cited by the circuit court, subsection (e)(2), also does not provide a specific starting point for the one-year limitations period in Mr. Lawrence's case. Subsection (e)(2) indicates that a one-year limitations period generally applies to successive post-conviction motions raising newly-recognized constitutional claims, but the rule does not specify when that one-year limitations period begins to run in a particular case.

This Court's precedent—including the *Dixon* decision cited by the circuit court—provides an answer to the question of when the one-year limitations period begins to run on a successive post-conviction claim based on a newly-recognized constitutional right, like Mr. Lawrence's claim based on *Atkins*, *Hall*, and *Walls*. However, rather than supporting the circuit court's conclusion that the January 25 *Walls* mandate is the relevant trigger date, *Dixon* supports the view that the later-issued May 4 corrected opinion in *Walls* is the correct date.

Resolution of the corrected opinion date versus mandate date issue is not only important in Mr. Lawrence's case, but will be important in other cases. This Court should hold that the circuit court's interpretation was inappropriately restrictive.

II. In Light of This Court's Decision in *Dixon*, Mr. Lawrence's Counsel Reasonably Believed that Mr. Lawrence Had One Year From the Date of the Corrected *Walls* Opinion—and Not the Date of the Earlier-Issued *Walls* Mandate—to Invoke the Eighth Amendment's Categorical Bar Against the Execution of the Intellectually Disabled

In *Dixon*, this Court held that, in calculating the limitations period for constitutional claims raised in a successive post-conviction motion, the relevant trigger event is this Court's decision holding the newly-recognized constitutional right retroactive, not the earlier decision recognizing the right in the first place. 730 So. 2d at 267. *Dixon* explained that concerns of basic fairness and uniformity—the same considerations underlying the decision whether to hold a newly-recognized constitutional right retroactive—"also compel the conclusion that it is appropriate to utilize the date of our decision announcing retroactivity, specifically the date of this Court's mandate, as the beginning date for calculating" the limitations period. *Id.*

If that were all that *Dixon* said, the circuit court's decision might be correct: as the circuit court noted, the mandate in *Walls* issued on January 25, 2017. But *Dixon* did not ascribe particular significance to the date of mandates, other than that, in most cases, the mandate is the last filing by this Court in an appeal.

Dixon sought to afford the most generous starting point for the limitations period applicable to the filing of constitutional claims. *Dixon* rejected suggestions that the limitations period should start at any date prior to the Court's final word in the appeal granting retroactivity to the relevant constitutional right. The *Dixon* Court

explained that an "unbending rule" starting the limitations period on the date that the relevant constitutional right was first recognized, or on the date that the initial opinion announcing retroactivity was issued, would "not comport with the policy reasons underlying our decision to give a prior opinion retroactive application" and "create potential problems for the lower courts and the defendants," arising from confusion over when the limitations period begins. *See id.* at 267-68.

In short, the import of *Dixon* is that the limitations period should run from whenever this Court speaks the last word on the appeal granting retroactivity to the relevant constitutional right, and not at some earlier date.

Dixon did not address the specific circumstances presented in Mr. Lawrence's case, and that is why this Court's clarification is needed. Here, after the mandate issued in the appeal holding the relevant constitutional right retroactive (*Walls*), this Court subsequently entered a corrected opinion in the *Walls* case. Amicus submits that the reasoning of *Dixon*—providing a clear starting point for the limitations period based on the Court's final word in the retroactivity appeal, and avoiding "unbending" procedural rules that would give defendants a shortened length of time to file their constitutional claims—supports using the May 4, 2017, date of the corrected *Walls* opinion as the relevant triggering event in Mr. Lawrence's appeal. Although the mandate is generally the final word from this Court in an appeal, in Mr. Lawrence's case, the Court took further action after the mandate issued. The

last word in *Walls* was not the January 25 mandate, but the May 4, 2017, corrected opinion. Indeed, this Court's own website lists the *Walls* corrected opinion as issuing in the opinion release that occurred on May 4, 2017. *See* 2017 Opinions, *available at http://www.floridasupremecourt.org/decisions/2017/index.shtml*.

Amicus' reading of *Dixon* is supported by the rule of lenity, which is well-established in Florida and federal law. The rule of lenity is a "fundamental tenet of Florida law regarding the construction of criminal statutes, which weighs in favor of the defendant." *Polite v. State*, 973 So. 2d 1107, 1112 (Fla. 2007). It provides that "[a]ny ambiguity or situations in which statutory language is susceptible to differing constructions *must* be resolved in favor of the [defendant]." *State v. Weeks*, 202 So. 3d 1, 8 (Fla. 2016) (quoting *State v. Byars*, 823 So. 2d 740, 742 (Fla. 2002)); *see also United States v. Santos*, 553 U.S. 507, 514 (2008) (plurality opinion) ("[T]he tie must go to the defendant. The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them"); *State v. Winters*, 346 So. 2d 991, 993 (Fla. 1977) ("Penal statutes must be strictly construed in favor of the accused where there is doubt as to their meaning"). The rule of lenity "is not just an interpretive tool, but a statutory directive." *Kasischke v. State*, 991 So. 2d 803, 814 (Fla. 2008). Here, the rule of lenity provides that any ambiguity regarding whether the one-year statute of limitations begins at the date of the *Walls* mandate, or the later-issued corrected opinion, must be resolved in favor of Mr. Lawrence.

The other case cited by the circuit court, *Hamilton v. State*, 236 So. 3d 276, 278 (Fla. 2016), is inapposite. In *Hamilton*, this Court held that the appellant's claim under *Hurst v. Florida*, 136 S. Ct. 616 (2016), did not meet an exception to Rule 3.851's limitations period because *Hurst* had not been held to apply retroactively to cases in his posture. *See* 236 So. 3d at 278. In contrast, there is no dispute here that *Walls* meets Rule 3.851(d)(2)(B)'s retroactivity requirement. *Hamilton* did not involve the issue of whether the mandate, or a later-issued corrected opinion, should be the starting point for the limitations period.

In light of *Dixon*, Mr. Lawrence's counsel reasonably believed that Mr. Lawrence had one year from the May 4, 2017, corrected opinion in *Walls*—and not the date of the earlier-issued mandate—to invoke the Eighth Amendment's categorical bar against the execution of the intellectually disabled. Counsel's reasonable belief is evident by the date on which counsel filed Mr. Lawrence's claim, on May 2, 2018—just before the one year mark after the corrected opinion in *Walls*.[1]

The circuit court's order provides no discussion of counsel's reasonable belief and whether it would be fundamentally unfair—and a violation of Mr. Lawrence's federal constitutional rights—to summarily foreclose any consideration of his intellectual disability claim based on a time-bar analysis implicating only three

[1] As an aside, amicus notes that claims under *Hall* require meaningful investigation and development. Counsel is therefore justified in taking the time the law allows to develop the evidence necessary in order to plead a valid claim.

months. In effect, the circuit court's order provides that, even if Mr. Lawrence is in fact intellectually disabled, he can be executed—notwithstanding the Eighth Amendment and *Hall*—because his attorneys filed in May rather than January. This Court should not allow counsel's reasonable belief to be completely discounted in the analysis. The Court should remand Mr. Lawrence's claim for consideration on the merits and provide clarity for future litigants regarding *Dixon* and the effect of post-mandate corrected opinions on the rule's one-year limitations period.

III. In Order to Clarify the Meaning of *Dixon*, Fulfill the Mandate of *Atkins* and *Hall*, and Ensure Basic Fairness, This Court Should Adopt a Presumption That Rule 3.851's One-Year Limitation Period for Constitutional Claims Raised in a Successive Motion Begins to Run From the Date of the Mandate or Any Corrected Opinion, Whichever is Later

In order to clarify the meaning of *Dixon*, fulfill the mandate of *Atkins* and *Hall*, and ensure basic fairness, this Court should adopt a presumption that Rule 3.851's one-year limitation period for constitutional claims raised in a successive post-conviction motion begins to run from the date of the mandate or any corrected opinion, whichever is later. As noted above, such a presumption is in accord with this Court's opinion in *Dixon*, which suggests that notions of clarity, basic fairness, and protection of constitutional rights are the dispositive considerations in determining when the rule's limitations period begins to run.

Of note, the circuit court's procedural ruling was not based on Mr. Lawrence's failure to seek relief before *Walls*. The circuit court correctly concluded that Mr.

Lawrence's counsel reasonably waited until after *Walls* made *Hall* retroactive before proceeding with a successive Rule 3.851 motion. The basis for the circuit court's procedural ruling was simply the court's belief that Mr. Lawrence was required to file his motion within one year of the mandate in *Walls*, rather than the later-filed corrected *Walls* opinion This makes Mr. Lawrence's case an ideal vehicle for this Court to clarify *Dixon* and adopt a limitations-period presumption based on the last filing by this Court in a retroactivity decision, without implicating what amicus views as constitutionally problematic case law suggesting a procedural requirement that Florida prisoners seek relief both before and after *Hall*.

Put another way, Mr. Lawrence could not file before *Atkins* because there was no prohibition on the execution of the intellectually disabled. Mr. Lawrence could not file between *Atkins* and *Hall* because his I.Q. score of 75 would not have qualified under the hard cutoff of 70 in effect in Florida before *Hall*. After *Hall*, Mr. Lawrence's counsel reasonably concluded that, given *Dixon*, the corrected opinion issuance date for *Walls* was the proper date to use. The circuit court's restrictive view, however, has improperly disenfranchised Mr. Lawrence. Adopting amicus' proposed presumption will avoid, in Mr. Lawrence's case and future cases, violating the mandate of *Atkins*, which holds clearly that individuals with intellectual disability are categorically exempt from the death penalty under the United States Constitution. As reflected in *Hall* and other cases, states cannot frustrate the

mandate of *Atkins* through rigid procedural rules that have the effect of allowing some intellectually disabled prisoners to lose the Eighth Amendment's protection. *Atkins* held that the execution of individuals with intellectual disability "is excessive and that the Constitution 'places a substantive restriction on the State's power to take the life' of a mentally retarded offender." 536 U.S. 304, 321 (quoting *Ford v. Wainwright*, 477 U.S. 399 (1986)). It is true that *Atkins* "le[ft] to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." 536 U.S. at 317 (quoting *Ford*, 477 U.S. at 405, 416-17). But *Atkins* did not afford the states discretion to disregard significant evidence that a prisoners is intellectually disabled based on rigid procedural rules.

Post-*Atkins* cases determined by the United States Supreme Court have consistently curtailed state discretion when it risks the execution of an intellectually disabled individual. As this Court is aware, in *Hall*, the Supreme Court invalidated Florida's strict I.Q. cutoff and mandated a more flexible rule that allowed individuals within the standard error measurement to present evidence of adaptive deficits. 134 S. Ct. at 2001. In *Moore v. Texas*, 137 S. Ct. 1039, 1044 (2017), the Supreme Court found the state's use of the *Briseno* factors unconstitutional in evaluating adaptive deficits. And, in *Brumfield v. Cain*, 135 S. Ct. 2269 (2015), the Supreme Court found it not only incorrect, but unreasonable under federal habeas standards, for the state to deny a hearing on facts similar to those in Mr. Lawrence's claim. *Brumfield*

reiterated that the threshold for an evidentiary hearing is very low: a defendant is entitled to an evidentiary hearing if there exists a reasonable doubt as to his intellectual disability. *Id*. at 2281. In each of these cases, the paramount concern was that state procedural rules risked that a person with intellectual disabilities would be executed in violation of the Eighth Amendment. *Cf. In re Hill*, 715 F.3d 284, 304-05 (11th Cir. 2013) (Barkett, C.J., dissenting) ("I cannot see how any procedural hurdle . . . can be constitutionally enforced when doing so will eviscerate the constitutionally-protected right that a juvenile, mentally retarded, or insane offender has not to be executed."); *State ex rel. Wearry v. Cain*, 161 So. 3d 620, 627-28 (La. Feb. 27, 2015) (Crichton, J., dissenting) ("If the defendant is deemed intellectually disabled and afforded the protections under *Atkins*, he is exempt from the death penalty and that claim, in my opinion, cannot be procedurally defaulted.").

The United States Court of Appeals for the Eleventh Circuit has expressed similar views that procedure must sometimes yield to the vindication of substantive federal constitutional rights. *See, e.g., Wright v. Secretary, Dept. of Corrs.*, 278 F.3d 1245, 1259 (11th Cir. 2002); *Johnston v. Singletary*, 162 F.3d 630, 637 (11th Cir. 1998); *Medina v. Singletary*, 59 F.3d 1095, 1107 (11th Cir. 1995); *Adams v. Wainwright*, 764 F.2d 1356, 1359 (11th Cir. 1985).

As the institutional federal capital defender for northern Florida, amicus has provided representation and consulted in the cases of numerous clients with Eighth

Amendment intellectual disability claims. Relative to other cases where Eighth Amendment relief has been granted, the evidence of intellectual disability that Mr. Lawrence proffered in the circuit court is significant and compelling. However, unless this Court intervenes, no trier of fact will be able to consider Mr. Lawrence's significant intellectual disability on the merits. Based on the mandate of *Atkins* and *Hall*, Mr. Lawrence should be afforded an opportunity to present this evidence and receive the Eighth Amendment's categorical protection from the cruel and unusual punishment of execution of intellectually disabled individuals.

Given the compelling evidence of intellectual disability that was denied merits review, Mr. Lawrence's cases provides an ideal opportunity for this Court to adopt a presumption that Rule 3.851's one-year limitation period for successive constitutional claims begins to run from the date of the mandate or any corrected opinion, whichever is later. Adopting this presumption and remanding to the circuit court will clarify the meaning of *Dixon* for future litigants, fulfill the mandate of *Atkins* and *Hall*, and prevent a miscarriage of justice in Mr. Lawrence's case.

IV. Even if This Court Chooses to Prospectively Enforce an Unbending Rule Based on the Date of the Mandate Alone, the Court Should Exercise its Inherent Authority in This Case to Prevent a Miscarriage of Justice in Light of Counsel's Reasonable Reading of *Dixon* and Mr. Lawrence's Significant Evidence of Intellectual Disability

Even if this Court declines to adopt the presumption suggested above and instead chooses to prospectively enforce an unbending rule based on the date of the

mandate alone, the Court should exercise its inherent authority in this case to prevent a miscarriage of justice in light of counsel's reasonable reading of *Dixon* and Mr. Lawrence's significant evidence of intellectual disability. *See State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997) (explaining that the Court has the inherent power to correct erroneous rulings in exceptional circumstances to prevent manifest injustice).

Amicus has provided representation or consultation in numerous cases implicating intellectual disability claims. As compared to these cases, Mr. Lawrence's evidence of intellectual disability strongly suggests that he has "(1) subaverage intellectual functioning; (2) significant limitations in adaptive skills; and (3) manifestation of the condition before age 18." *Oats v. State*, 181 So. 3d 457, 466 (Fla. 2015). Mr. Lawrence has a demonstrated I.Q. of 75 and a history that indicates manifestation of adaptive deficits prior to the age of 18. Both the original trial defense expert in Mr. Lawrence's case, Dr. James Larson, and an expert retained by post-conviction counsel, Dr. Jethro Toomer, have opined that Mr. Lawrence's proffered deficits warrant a hearing on his intellectual disability claim.

For example, as detailed by his initial brief in this Court, Mr. Lawrence was encouraged by his father to drink alcohol as a child, and consumed alcohol and illicit drugs before age ten. Initial Brief at 2. He struggled in school, was held back twice, and would have been held back twice more if not for social promotions. *Id*. at 3. Teachers described him as "very slow." *Id*. He could not read, write, or sign his

name, and was so illiterate when he arrived at prison that prison officials could not perform basic intake testing. *Id*. Mr. Lawrence also struggled with non-academic life skills. He could not manage money, hold down a job, cook, do laundry, or keep up with day-to-day affairs. *Id*. He was financially dependent on others, and was so gullible and easily manipulated that he would do anything he was asked to without thought to the consequences. *Id*. at 3-4. He functioned like a child. *Id*. at 3.

Mr. Lawrence's evidence strongly suggests that he is within the group of individuals *Hall* aims to protect, but if the circuit court's order stands, his evidence will never be considered on the merits. To avoid a manifest injustice, this Court should hold that Mr. Lawrence's successive Rule 3.851 motion was timely filed and remand to the circuit court for further proceedings.

CONCLUSION

The circuit court's decision should be reversed.

Respectfully submitted,

/s/ Billy H. Nolas
Billy H. Nolas
Chief, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, FL 32301
(850) 942-8818
billy_nolas@fd.org
Florida Bar No. 806821

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on September 27, 2018, the foregoing was served via the e-portal to Assistant Capital Collateral Regional Counsels Stacy Biggart and Matletha Bennette, attorneys for Appellant Gary Lawrence, at stacy.biggart@ccrc-north.org and matletha.bennette@ccrc-north.org, and Assistant Attorney General Janine Robinson, counsel for the State of Florida, at janine.robinson@myfloridalegal.com.

/s/ Billy H. Nolas
Billy H. Nolas

CERTIFICATE OF COMPLIANCE

I certify that this computer-generated amicus curiae brief is in compliance with Florida Rules of Appellate Procedure 9.210 and 9.370.

/s/ Billy H. Nolas
Billy H. Nolas