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IN IN THE SUPREME COURT OF FLORIDA
FILING MEMORANDUM

Hon. John A. Tomasino
Clerk of the Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

Meryl McDonald DC # 180399
Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083


State of Florida v. Meryl McDonald, Case No: SC19-635
L.T No: CRC94-2958 CFANO

Dear Clerk,

Please find enclosed for immediate filing:

1. Appellants Supplemental Brief and Notice to the Court in the above styled cause.

Sincerely,


Meryl McDonald DC# 180399

Cc: Jonathan E. Hackworth, Esq.
Timothy A. Freeland, Asst. Atty. Gen.

Received, Clerk, Supreme Court

JAN 24 2020

IN IN THE SUPREME COURT OF FLORIDA
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State of Florida v. Meryl McDonald, Case No: SC19-635
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Notice to the Court

Appellant would request that this Honorable Court take Judicial Notice of the Appellant's Supplemental Brief which complies with this court's order dated December 19th 2019, and Florida Rules of Appellate Procedure rule 9.210(a)(5)(E), (cover sheet, contents, citations, etc., excluded from arguments)

Sincerely,


Meryl McDonald DC# 180399

Cc: Jonathan E. Hackworth, Esq.
Timothy A. Freeland, Asst. Atty. Gen.

Received, Clerk, Supreme Court

JAN 24 2020

IN THE SUPREME COURT OF FLORIDA

MERYL MCDONALD,

Appellant,

v.

Case No:SC19-635

L.T. No: CRC94-2958-CFANO-

STATE OF FLORIDA,

Appellee.

_____ /

APPELLANT'S SUPPLEMENTAL BRIEF

On appeal from the Circuit Court of the Sixth Judicial Circuit,
In and for Pinellas County, Florida

Appellants Supplemental Brief pursuant to this court's order dated
December 19th 2019 and all applicable rules of Appellate Procedure

Meryl McDonald pro se
DC# 180399-Loc: P3205
Union Correctional Institution
Raiford, Florida 32083

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STATEMENT OF THE CASE AND FACTS

Appellant, Meryl McDonald, in order to preserve this court's time would adopt the procedural history and facts as outlined in both the States brief and the brief submitted by Attorney Jonathan E. Hackworth.

SUMMARY OF THE ARGUMENT

Florida Rule of Criminal Procedure 3.851(b)(6) & (i) is unconstitutional as it requires appellant to waive all post-conviction proceedings in order to dismiss or discharge post-conviction counsel, which in turn, also denies the appellant the right to self-representation.

ARGUMENT

The Appellant would first point out that he is well aware of the Court's obligations and concerns in regards to the Court's administrative responsibilities and the expenditure of judicial resources. With these concerns in mind, Appellant will show this Honorable Court the reasons why rule 3.851(b)(6) & (i) are unconstitutional on their face and the decision in *Gordon v. State*, 75 So.3d 200 (Fla. 2011) should be reconsidered / revisited and a procedure set forth that would not only take into consideration the Court's administrative responsibilities and expenditure of judicial resources, but also the death sentenced inmates right to be entitled to some type of *Nelson / Faretta*¹ type procedure where there is an obvious issue between post-conviction counsel and the death sentenced inmate.

¹Nelson v. State, 274 So.2d 256 (Fla. 4th DCA 1973); Faretta v. California, 422 U.S 806,95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)

Appellant would also assert that he would rely on the arguments found in his original Motion and would also agree with the arguments set forth in both the States brief and attorney Hackworth's brief with the exception that neither Attorney addressed with this Court a viable alternative to the unconstitutional portions of rule 3.851

While appellant is in general agreement with a rule that prohibits *both* the defendant pro se and his assigned counsel from advocating the appellant's appeal at the same time, However, a rigid no-exception prohibition on pro se filings in this Court and the trial court during an appeal is not a wise course. In this case, for example, appellant has had an issue with post-conviction counsel failure to present all the operative facts to a particular issue that would be necessary in order to gain the relief requested.

This court has promulgated sub-sections to the post-conviction rule, 3.851(b)(6) & (i), which allows capital defendants to file pro se requests to discharge counsel *and to waive all their rights to continue attacks on their convictions or sentences.*(emphasis added). This, in effect, acts to bar appellant from complaining about his counsel's representation or any right that appellant may have in representing himself or setting forth his valid claims for relief.

Obviously, without some type of procedure in place that allows an appellant to file a complaint against post-conviction counsel for ineffective assistance, that effort will be hampered by a blanket ban on pro se filings. This court has issued several opinions criticizing counsel's conduct based not only its own observations, *but also on pro se communications filed with the Court.*

Of course, courts have traditionally been charged with responding to legitimate complaints from defendants about the conduct of appointed counsel. In most instances, this process serves to resolve problems as they arise, such as simple problems of communication, rather than allowing small problems to become bigger ones later in the process.

This Court, in *Hojan v. State*, 3 So.3d 1204, 1211 (Fla 2009) stated in pertinent part that; "[T]he defendant, not the attorney, is the captain of the ship." Citing *Nixon v. Singletary*, 758 So. 2d 618, 625 (Fla. 2000) ("Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant."). *Id.* at 1211. Even though these cases dealt with different procedural postures, this principle is equally applicable to the post-conviction arena

Furthermore, as noted by Justice *Brennan*, with whom Justice *Marshall* joined in dissent in *Jones v. Barnes*, 463 U.S. 745, 755-764 (1983) "The Sixth

Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." I find myself in fundamental disagreement with the Court over what a right to "the assistance of counsel" means. *The import of words like "assistance" and "counsel" seems inconsistent with a regime under which counsel appointed by the State to represent a criminal defendant can refuse to raise issues with arguable merit on appeal when his client, after hearing his assessment of the case and his advice, has directed.*(emphasis added) id at 755.

Lastly, the Legislature has explicitly charged the courts with the responsibility of monitoring counsel's performance in capital cases to be certain capital defendants are receiving competent services. See §27.711(12) Fla. Stat. (The court shall monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation. *The court shall also receive and evaluate allegations that are made regarding the performance of assigned counsel.*)(emphasis added)

However, even with this mandate from the Legislature, this court should not be required to attempt to monitor all of the attorney's assigned to death sentenced defendants, with this Court's own heavy case load, this responsibility is untenable and problematic at best, and should not be the sole

means in which to evaluate and safeguard the rights of a defendant who is sentenced to the ultimate punishment, nor should the court adopt a blanket policy prohibiting any pro se communications with the Court.

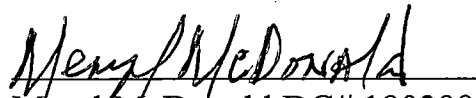
Rather, the court should promulgate or adopt a rule within 3.851 that would allow for a *Nelson / Faretta* type procedure that would allow for a defendant sentenced to death to be able to lodge complaints against an attorney who is not properly raising the issues that need to be raised, is incompetent, or does not have the clients best interests at heart. This would allow for the continuing administration of justice, fulfill this Court's obligations and concerns in regards to the Court's administrative responsibilities, prevent frivolous filings by pro se appellants, and control the expenditure of judicial resources.

Appellant asserts that to be put into a position to have to choose between life or death based on a rule that disallows any pro se filings is not only absurd, but also unconstitutional on its face. To hold otherwise would only grant the right to a waiver of counsel to a defendant who accepts his own execution!

CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court not only reconsider the holding in *Gordon v. State*, 75 So.3d 200 (Fla. 2011), but more importantly, determine that Florida Rule of Criminal rule 3.851 (b)(6) & (i) is unconstitutional. Further, the solution outlined in Attorney Hackworth's conclusion sounds to be a somewhat feasible resolution to this issue, however, the more prudent approach would be to promulgate rule 3.851 in a manner where it would incorporate a *Nelson / Faretta* type procedure.


Respectfully Submitted,


Meryl McDonald DC# 180399
Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083
Appellant *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellant's Supplemental Brief , Was placed in the hands of prison officials for mailing to: Florida Supreme Court, Supreme Court Bldg. 500 S. Duval St., Tallahassee, Florida 32399; Jonathan Hackworth, Esq. Hackworth Law, 1818 N. 15th Street, Tampa, Florida 33605 - 3642; Timothy A. Freeland, Assist. Atty. Gen., 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607 Florida on this 17 day of January 2020.

Respectfully Submitted,



Meryl McDonald DC# 180399

Union Correctional Institution

P.O. Box 1000

Raiford, Florida 32083

Appellant *pro se*

CERTIFICATE OF COMPLIANCE

I Herby certify that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.



Meryl McDonald DC# 180399