

IN THE SUPREME COURT OF FLORIDA

CRAIG ALAN WALL, SR.,

Appellant,

v.

CASE NO: SC19-1727

**LOWER CASE NO: 522010CF003759XXXXNO
POSTCONVICTION CAPITAL CASE**

STATE OF FLORIDA,

Appellee.

_____ /

APPENDIX TO SUPPLEMENTAL BRIEF

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Respectfully submitted,

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APPENDIX TO SUPPLEMENTAL BRIEF

APPENDIX A

December 15, 2008 Order, filed in State of Florida v. Richard England,
Volusia County Case No.: 2003-35769-CFAES

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO: 2003-35769-CFAES

v.

RICHARD ENGLAND,

Defendant.

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ORDER

THIS MATTER came on to be heard before the Court on December 5, 2008 for a hearing on the Defendant's *pro se* "Motion to Stay Proceedings Pending Removal/Reappointment of Post Conviction Counsel." The Court having reviewed the motion, the court file, and received testimony from the Defendant and Capital Collateral Regional Counsel, finds as follows:

The Defendant has alleged that appointed-counsel, Richard E. Kiley, James Viggiano, and Andrew A. Shakoor, Assistant CCRCs, have rendered ineffective assistance based upon seven grounds. Pursuant to Florida Statutes Section 27.711(12), "[t]he 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...." After carefully considering the Defendant's each of the claims and the responses of Mr. Kiley and Mr. Viggiano, and the State, the Court finds that the Defendant's claims lack merit, and no conflict exists between the Defendant and defense counsel. Further, the Court finds that defense counsel has not rendered ineffective assistance, and has not acted incompetently. The Defendant has not established a sufficient basis for Mr. Kiley, Mr. Viggiano and/or Mr. Shakoor to be discharged.

For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that the request for new counsel is **DENIED**.

DONE AND ORDERED in Chambers, in DeLand, Volusia County, Florida, this 15
day of December 2008.



JAMES R. CLAYTON
CIRCUIT JUDGE

cc: Rosemary Calhoun, Assistant State Attorney

Barbara C. Davis, Assistant Attorney General, 444 Seabreeze Blvd., Suite 500, Daytona
Beach, Florida.

Richard B. Kiley, Ali A. Shakoor, and James B. Viggiano Jr., Assistant CCRCs, Office of
CCRC-Middle, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619

Richard England, DC# 115574, Union Correctional Institution, 7819 N.W. 228th Street,
Raiford, Florida 32026-4000

IN THE SUPREME COURT OF FLORIDA

CRAIG ALAN WALL, SR.,

Appellant,

v.

CASE NO: SC19-1727

**LOWER CASE NO: 522010CF003759XXXXNO
POSTCONVICTION CAPITAL CASE**

STATE OF FLORIDA,

Appellee.

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APPENDIX TO SUPPLEMENTAL BRIEF

APPENDIX B

Transcript of February 23, 2017 Proceedings in State of Florida v. Terance
Valentine, Hillsborough County Case No.: 88-CF-12996

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA

Case No.: 88-CF-12996

vs.

Division: J

TERANCE VALENTINE,
Defendant.

TRANSCRIPT OF PROCEEDINGS

This case came on to be heard before the
Honorable Michelle D. Sisco, Circuit Judge, at the
Hillsborough County Courthouse Annex, Tampa, Florida, on
February 23, 2017, commencing at approximately 11:00
a.m., reported by Mary E. Blazer, RPR.

APPEARANCES:

Carol M. Dittmar, Assistant Attorney General
Office of Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607
On Behalf of the State of Florida.

Ali Andrew Shakoor, Esquire
Capital Collateral Regional Counsel
12973 North Telecom Parkway
Temple Terrace, Florida 33637-0907
(Appearing Via Telephone.)
On Behalf of the Defendant.

Marie-Louise S. Parmer, Esquire
Samuels Parmer Law Firm, P.A.
P.O. Box 18988
Tampa, Florida 33679-8988
On Behalf of the Defendant.

Also Present:

Terance Valentine, Defendant (Appearing Via Telephone)
Staff Attorneys

P R O C E E D I N G S

1
2 THE COURT: And I know we've got the Valentine
3 and Anderson.

4 And so on Valentine I think we've got some
5 people appearing on the phone. And I think we're
6 waiting on Ms. Parmer -- oh, she's here. Hello.

7 So I'll tell you what. Let's do Valentine
8 first because I think -- is it Mr. -- let's see. I
9 know Mr. Valentine is supposed to be appearing
10 telephonically and then Mr. Shakoor is suppose to
11 be appearing telephonically as well.

12 Okay? So let me see if my JA has them on the
13 phone.

14 They are, I think.

15 All right. Good morning. This is Judge
16 Sisco.

17 Do I have Mr. Shakoor on the telephone?

18 MR. SHAKOOR: Yes, ma'am, Your Honor.

19 THE COURT: And Mr. Terance Valentine, are you
20 also on the telephone?

21 Hello?

22 Okay. He's not on yet. I'm going to put you
23 back on hold, Mr. Shakoor, and let me see what's
24 going on with Mr. Valentine, all right?

25 MR. SHAKOOR: Sure thing.

1 THE COURT: Okay. Thanks.

2 Okay. I'll be right back.

3 (Pause.)

4 All right. So, apparently, the line is busy
5 at the correctional facility, so we're fine, we'll
6 wait on him.

7 So while we're waiting on Mr. Valentine, on
8 Anderson -- you can just remain where you are,
9 Ms. Parmer, you don't have to move.

10 Do I have the parties here on Anderson?

11 MS. DITTMAR: Yes, Your Honor. I believe so.

12 MR. MOODY: Is it the State or is the AG on
13 Anderson?

14 THE COURT: I don't know.

15 MS. DITTMAR: I'll be happy to do it, it's my
16 case.

17 MR. MOODY: Oh, okay.

18 MS. DITTMAR: I didn't know if Jay was going
19 to come or not. Jay Pruner was the one --

20 THE COURT: Okay. Now, it looks actually like
21 we have everyone on Valentine. I apologize for the
22 record being confused.

23 I'm actually going to start with Valentine
24 because I think we now have everybody.

25 Okay. Hi. This is Judge Sisco. Do I still

1 have Mr. Shakoor on the line?

2 MR. SHAKOOR: Yes, ma'am, Your Honor.

3 THE COURT: And Mr. Terance Valentine, are you
4 also on the line?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. All right. Mr. Valentine,
7 we are here because I believe you are seeking to
8 have a -- your current counsel discharged, and you
9 wish to hire Ms. Parmer; is that accurate?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. And I think you've alleged
12 that there is some type of conflict due to an
13 allegation of a missed timeline in the federal
14 courts; is that correct?

15 THE DEFENDANT: No.

16 THE COURT: No.

17 THE DEFENDANT: I am saying there's a conflict
18 of interest because they misrepresent what I needed
19 to do in court. They have lied to me and have not
20 been prepared even when he had to do -- take
21 documents in my behalf.

22 THE COURT: Okay. And when you say "they,"
23 who are you referring to?

24 THE DEFENDANT: Mr. Shakoor, representative of
25 CCR. He wasn't at the Supreme Court that was

1 arguing about me killing two people when I was only
2 indicted of killing one.

3 THE COURT: Okay.

4 THE DEFENDANT: And he also stated in a letter
5 that you have there that they will not work on
6 anything that they never discovered themselves.
7 They only discovered two issues; and the other
8 eleven issues that were granted by Judge Barbas,
9 they never touched.

10 THE COURT: Okay.

11 THE DEFENDANT: They say they don't have any
12 interest in those.

13 THE COURT: Okay.

14 THE DEFENDANT: So, in other words, they're
15 not representing me in my interest.

16 THE COURT: Okay. So well, before I really
17 get into all that, I guess the thing I need to know
18 from Ms. Parmer is, are you even available and
19 willing to accept the case?

20 MS. PARMER: Well, Your Honor, just to
21 clarify --

22 THE COURT: Come on up so that way -- whoever
23 is going to speak on the record will need to come
24 up closer to the telephone.

25 MS. PARMER: To the telephone?

1 THE COURT: Or to the speaker, yes, right
2 there.

3 MS. PARMER: Your Honor, just to clarify.
4 Mr. Valentine is not seeking to hire me.

5 THE COURT: Uh-huh.

6 MS. PARMER: I believe he's seeking to have me
7 appointed.

8 THE COURT: Appointed, correct.

9 MS. PARMER: What the Court may or may not be
10 aware is that he -- his federal habeas is
11 pending --

12 THE COURT: Uh-huh.

13 MS. PARMER: -- in the Middle District in
14 front of Judge Merryday.

15 THE COURT: Uh-huh.

16 MS. PARMER: And in that case I filed a motion
17 on Mr. Valentine's behalf seeking to have a finding
18 that CCRC was ineffective under Martinez, and that
19 Mr. Valentine is entitled to conflict-free counsel
20 in federal court because the United States Supreme
21 Court has made clear if there is an issue where
22 current habeas counsel is alleged to have been
23 ineffective in the state court proceedings, they
24 can't advance the federal case because it is
25 adverse to their interest. In addition, there is

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also a Florida Bar ethics advisory opinion essentially setting that out as well.

All of that is filed or cited or referenced in my motion. In addition, there has been a letter from the ambassador of Puerto Rico urging the federal district court to appoint me on Mr. Valentine's behalf. And there's also been an amicus brief filed by Yale ethics bureau in support of appointing conflict-free counsel for Mr. Valentine. So Mr. Valentine is unable to retain me.

THE COURT: Right.

MS. PARMER: So I just wanted to clarify that.

THE COURT: And I misspoke and I'm aware of that.

Are you on the registry?

MS. PARMER: I am not on the state registry.

THE COURT: Okay. Okay. Okay. So, and what's the -- what's the status of that motion in federal court?

MS. PARMER: So that -- the original motion was denied, and then we filed a motion for rehearing. Mr. Valentine's case has been stayed in light of Hurst V Florida --

THE COURT: Uh-huh.

1 MS. PARMER: -- and issues addressed in
2 retroactivity, so the federal district court has
3 essentially stayed -- I don't want to say every
4 case, but I'm aware of many, many, many cases were
5 stayed and have been stayed. And I know that I
6 have other cases in front of Judge Merryday where
7 he has stayed those cases even after the issuance
8 of Mosley which addressed retroactivity, and has
9 stayed those cases pending a ruling in Lambrix
10 until Lambrix is final. He has not issued that
11 order in Valentine's case, so -- but Valentine's
12 case has been stayed, but he hasn't issued the
13 order continuing the stay post Mosley and extending
14 it through Lambrix.

15 THE COURT: Okay. And so, Mr. Shakoor, what
16 is your position on all of this?

17 MR. SHAKOOR: Your Honor, I mean, it wouldn't
18 be proper for me to attack the merits of what
19 Mr. Valentine wrote. I mean, I obviously disagree
20 with a lot of his assertions, but I'm not going to
21 attack the merits of his pleadings. I think my
22 response speaks for itself.

23 Ms. Parmer is correct regarding the status of
24 the case in federal court. The last order that I
25 saw from the federal court indicated that I need to

1 file a motion once State V Lambrix is decided by
2 the Florida Supreme Court, I need to file a motion
3 in federal court.

4 I can tell you in that motion I will ask the
5 Court to reconsider its ruling denying Ms. Parmer
6 the opportunity to take over the case in federal
7 court. There is a lot going on with capital juris
8 prudence in Florida, as Your Honor is aware.

9 THE COURT: Right.

10 MR. SHAKOOR: And I think Mr. Valentine would
11 be best served with counsel who would be willing --
12 or with counsel that he would be willing to
13 converse with and -- and act with, you know, in his
14 own best interest.

15 THE COURT: Right. I think you had indicated
16 in your response that you've been unable to
17 communicate effectively with Mr. Valentine; is that
18 basically correct?

19 MR. SHAKOOR: That is correct, Your Honor.
20 We've tried to visit him. He doesn't come out for
21 visits anymore. And we send him mail but he
22 returns the mail. And there's some Hurst-related
23 matters I would like to discuss with him.

24 THE COURT: Right.

25 MR. SHAKOOR: But he won't talk to me

1 obviously, but in his own best interest I think he
2 might be well-served for having Ms. Parmer or some
3 counsel that could advocate on his behalf based on
4 his willingness to work with them.

5 THE COURT: Okay.

6 MR. SHAKOOR: I would do -- I will defer to
7 the Court --

8 THE COURT: Right.

9 MR. SHAKOOR: -- regarding any final matter in
10 this case.

11 THE COURT: Well, the -- I guess -- I'll give
12 the State a chance to respond. I mean the biggest
13 issue -- first of all, the statute says there has
14 to be an actual conflict. And if there is an
15 actual conflict, I'm then supposed to appoint
16 another CCRC office, and -- but I can tell you
17 practically speaking, I've done that once or twice
18 and the amount of pushback I get from the other
19 CCRC office that's appointed is significant. And
20 their position is we're -- we're inundated. We
21 have to travel, you know, a distance, a great
22 distance to deal with these matters. And if there
23 is an attorney who is competent to take these cases
24 and they want to take the case, they want to be
25 appointed and the defendant wants them to be

1 appointed, what's the problem?

2 So, anyway, okay. Let me hear from the State.

3 MS. DITTMAR: I'll come up by the phone.

4 THE COURT: Yes, please do.

5 MS. DITTMAR: Thank you, Your Honor.

6 Of course, this case has a long history of
7 Mr. Valentine not getting along with his attorneys
8 as you may know from looking at the file.

9 Before trial, during trial, after trial,
10 before postconviction, during postconviction, it
11 was a continual battle to keep him represented.

12 THE COURT: Right.

13 MS. DITTMAR: He was very happy when CCR was
14 appointed. He has attached a letter to his motion
15 that they wrote in 2009, that he's now decided is a
16 conflict and he doesn't want to meet with them
17 anymore. And under the law, that's not -- he can't
18 create a conflict just so he can have a new
19 attorney appointed.

20 So I would argue that, first of all, he's not
21 eligible because he hasn't identified a conflict.
22 They've talked about well, maybe there was an issue
23 missed, but I haven't heard an issue identified
24 that he has tried to press anywhere that has been
25 rejected on procedural grounds, so that issue

1 hasn't been identified. To be able to say there is
2 a conflict because an issue wasn't raised, his
3 federal habeas was timely. So there is no issue
4 there about trying to get equitable tolling because
5 of attorney misconduct.

6 The other concern that I would add is that
7 even if there were some conflict available or
8 notable or found on these facts, that the State
9 would have some concern with Ms. Parmer since she
10 worked for the same office during the time that
11 they represented Mr. Valentine, that he's now
12 complaining about them. We feel like that's
13 setting up for --

14 THE COURT: Right.

15 MS. DITTMAR: -- another attorney five or ten
16 years from now to come in and say well, Mrs. Parmer
17 couldn't accuse them of things because she actually
18 was working at the same office.

19 So to avoid that potential problem, and a
20 further potential conflict which we don't see as
21 being a conflict since we don't see this as a
22 conflict, but just to avoid that trouble we would
23 say if Your Honor feels like it's necessary to
24 appoint another attorney, and I know the statute
25 does say another CCR office but I think in Your

1 Honor's discretion I don't -- I think that, you
2 know, if you did appoint somebody I don't know who
3 would complain about that.

4 THE COURT: Uh-huh.

5 MS. DITTMAR: But we do have a concern that it
6 be someone --

7 THE COURT: Right.

8 MS. DITTMAR: -- who cannot come along later
9 and be accused of having another conflict, so...

10 THE COURT: So, Ms. Parmer, what about that?
11 I mean that's a legitimate concern, right? We
12 don't want to -- you know, we jump through hoops to
13 have you appointed and then down the road
14 Mr. Valentine says oh, by the way, now I'm not
15 happy with her because she was at the office at the
16 same time, and so now we need to start all over.

17 MS. PARMER: Obviously, Mr. Valentine can
18 waive any conflict. I don't see that as a
19 conflict. Mr. Valentine is well aware that I
20 worked at CCRC Middle during the time frame that he
21 was represented by CCRC Middle. I have not been at
22 CCRC Middle for almost two years now. And have
23 no -- do not see any problems with my asserting any
24 failures by his then CCRC Middle counsel. And
25 there have been issues -- one thing I do want to

1 address, there have been issues identified in
2 federal district court. Specific issues identified
3 where the lawyers failed to -- the CCRC Middle
4 lawyers failed to conduct a reasonable
5 investigation including to guilt and penalty phase
6 issues. Obviously, until I'm appointed I can't
7 thoroughly investigate those issues.

8 THE COURT: Right.

9 MS. PARMER: In an interest of full disclosure
10 I just want the Court to know that I am part-time
11 with CCRC South, although I'm not authorized to
12 advise the Court of -- of any position that the
13 CCRC South would take as to this case, and they
14 have not been involved in this case at all.

15 My efforts to work on this case started when I
16 was contacted by the ambassador of Costa Rica. And
17 so I have been able to regularly meet with
18 Mr. Valentine. I've done so over the course of, I
19 think, approximately two years and have
20 communicated with Mr. Valentine, and we have
21 discussed his case and I've done all of that pro
22 bono.

23 THE COURT: Okay. Okay. So, Mr. Valentine, I
24 just want to make sure that you understand that the
25 only way I would even consider appointing

1 Ms. Parmer is if you agree to waive any allegation
2 of any potential conflict that she might have due
3 to her --

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Okay. Okay. I just want to make
6 sure that we understand because you've -- you know,
7 you've made an allegation of a conflict, or at
8 least an allegation on your behalf has been made in
9 federal court regarding things that were not done
10 by CCRC Middle. And Ms. Parmer may have been at
11 that office when these things were not occurring
12 that you complain of in your federal habeas
13 petition. So I just want to make sure you
14 understand that the only way I would consider
15 appointing Ms. Parmer is if you agree to waive
16 any -- any potential conceivable conflict that
17 Ms. Parmer may have representing you due to the
18 fact that she was once employed at CCRC Middle; do
19 you understand that?

20 THE DEFENDANT: Yes, ma'am. The answer is
21 yes.

22 THE COURT: Okay.

23 THE DEFENDANT: I'll waive; and another issue
24 that I would like to bring up, the State is
25 insisting in talking nonsense. They should be

1 aware that when CCR had my case the first time, the
2 first three, four years, all they did was file
3 shell motions. They wasn't filing for anybody
4 because the office wasn't even set up properly.
5 And once they set up properly to find out how many
6 customers they had, how many clients, they got rid
7 of a lot of us. And I was one of those who got rid
8 of. Wasn't no conflict of interest we're talking
9 about this or the other, they were just -- they had
10 too many people and that was it.

11 THE COURT: Okay.

12 THE DEFENDANT: And it took them about three
13 years to do that.

14 THE COURT: Okay. And so -- and,
15 Mr. Valentine, is Mr. Shakoor correct that you have
16 been refusing to meet with them and returning their
17 mail?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay.

20 THE DEFENDANT: I really don't want nothing to
21 do with them because they're liars.

22 Ma'am, I had -- they had a set of arguments
23 that they use on every case. They don't care what
24 your issues are. They're going to have that --
25 that aspirin -- I call it an aspirin argument. You

1 could have cancer, AIDS, or headaches, you're going
2 to get an aspirin, that's what they do. They had
3 put arguments on my behalf of post traumatic
4 disorder for people who been in the army. I
5 haven't been in any army. They have put up -- not
6 only me because we have other guys here, see I read
7 their mail, they read my mail, who have the same
8 visitation, so we know the same argument for
9 everybody regardless of if it's your case or not.
10 And --

11 THE COURT: Okay.

12 THE DEFENDANT: -- this is the type of thing
13 we're getting from them. And they don't want to
14 recognize when they're wrong. I have walked
15 into -- into meetings with them -- second to the
16 last meetings I had with them, I had my ID turned
17 over and we said hello, talked about football,
18 talked about everything, and they kept looking at
19 each other and shuffling the files. They never
20 knew my name.

21 THE COURT: Okay. So -- and I take it you
22 feel comfortable with Ms. Parmer; is that correct?

23 THE DEFENDANT: Yes, ma'am. We talk all the
24 time and we can discuss whatever. I feel very
25 comfortable with her.

1 THE COURT: Okay. Okay. So I'm inclined,
2 just in the interest of equity, to appoint you just
3 to keep the case moving. So...

4 THE DEFENDANT: Please.

5 THE COURT: And I don't know if it technically
6 fits within the statute or not, so...

7 MS. DITTMAR: Your Honor, in terms of keeping
8 the case moving, are you talking about the federal
9 case?

10 THE COURT: Well, no, but I mean, as far as
11 this case goes -- what I mean by that is that if
12 he's not communicating with his counsel and he's
13 being resistant, and I agree with you that you
14 can't create your own conflict. I totally agree
15 with you. But it does cause roadblocks as far as
16 whatever is involved with this case. If he's
17 refusing to speak with his attorney, it's just one
18 more hurdle as far as the ultimate resolution of
19 whatever is going to be with this case.

20 And I do think -- I mean, death-penalty cases
21 are different and the law is in flux. And if
22 Mr. Valentine feels comfortable with Ms. Parmer,
23 and Ms. Parmer wants to take the case on, I don't
24 see what the downside is to that. At this point
25 I'm not seeing a downside, so -- anyway.

1 So, just -- you-all just stay put, sit back
2 for a moment and let me talk to my staff attorneys
3 real quick.

4 (Off the record.)

5 THE COURT: Okay. Do you know, Ms. Parmer, if
6 I appointed CCRC South, would you be the attorney?

7 MS. PARMER: Not necessarily, no.

8 THE COURT: Is that something that you would
9 be able to speak with them?

10 MS. PARMER: That's a -- that's sort of an
11 administrative issue. I really -- I don't know
12 what their position would be. I -- I'm actually at
13 full capacity in the caseload that I have at CCRC
14 South.

15 THE COURT: Right.

16 MS. PARMER: I don't know.

17 THE COURT: Because the other problem is
18 you're not on the registry, that's another issue.
19 So that's my other only issue.

20 MS. PARMER: I am -- I am on the CJA panel, so
21 I've been court appointed to federal habeas --
22 capital federal habeas cases, but I'm not -- I am
23 JAC contracted.

24 THE COURT: Uh-huh.

25 MS. PARMER: I am appointed on two capital

1 trials, one in Volusia and one in Seminole County.

2 THE COURT: Okay.

3 MS. PARMER: So, you know, I'm willing to
4 abide by JAC rates and rules, and I'm familiar with
5 JAC rates and rules.

6 I suppose I could apply to get on the
7 registry, I don't know how long that takes. It
8 wasn't something that I really --

9 THE COURT: Right.

10 MS. PARMER: -- candidly wanted to do, so I
11 haven't done it. But if the Court wants me to
12 contact CCRC South and the powers -- you know, I'm
13 just an underling.

14 THE COURT: Yes.

15 MS. PARMER: I am a mere underling.

16 THE COURT: Yes.

17 MS. PARMER: I don't have those -- I can't
18 make those decisions, but I'm willing to contact
19 the --

20 THE COURT: Right.

21 MS. PARMER: -- supervisor of that office.

22 THE COURT: Yes.

23 MS. PARMER: Also look into the registry as
24 well and report back to the Court, if you would
25 like me to do that.

1 THE COURT: Yes. Let's do that because -- I
2 mean I'm sympathetic to Mr. Valentine's intention
3 and I do really want him to have a lawyer that he
4 feels comfortable with and is willing to
5 communicate and work with. I think that benefits
6 the system at large, but I mean, I do have a
7 statute that I have to abide by as well. So you
8 need to work within the framework of the statute to
9 see if we can't get to where I'm trying to get.

10 So -- and I guess I would need to be better
11 informed in regards to the registry, what are the
12 requirements, and then if for some reason it isn't
13 going to work out with CCRC South, if you otherwise
14 met the registry requirements --

15 MS. PARMER: I'm sure I do. I've been doing
16 capital postconviction for over a decade, so --

17 THE COURT: Okay. Yes.

18 MS. PARMER: -- I'm 99.9 percent positive I
19 would meet those. I mean I would have to look at
20 them to give you 100 percent.

21 THE COURT: Right.

22 MS. PARMER: I don't think that would be a
23 problem. I'm happy to look into both of those for
24 you.

25 THE COURT: Okay.

1 MS. PARMER: If you would give me a date
2 certain to report back.

3 THE COURT: Sure. Tell me how much time do
4 you need?

5 MS. PARMER: If you would give me two weeks
6 that would be great.

7 THE COURT: And --

8 MS. PARMER: Do you want me to appear in court
9 or do you want me to file something or --I would
10 rather appear.

11 THE COURT: If you think the CCRC South avenue
12 is not going to work.

13 MS. PARMER: Okay.

14 THE COURT: Then I would probably ask that you
15 file something just so we have a record of your
16 qualifications, your background, we have something
17 there that we can show this is what we went through
18 as far as making sure that you would otherwise be
19 qualified. So...

20 MS. PARMER: I can --

21 THE COURT: I'm scheduled -- I have another
22 death penalty matter on March the 8th at 1:30. I
23 think Finney. So if you were available then --

24 MS. PARMER: I -- the earliest -- I'm
25 available March 8th in the morning or some time

1 after 2:30 on March the 8th.

2 THE COURT: I mean, that's fine. I can do --
3 I can push Finney back to 2:30. Or do you know --

4 MS. DITTMAR: Actually, that's fine.

5 THE COURT: Why don't we push both of those
6 back to 2:30.

7 MS. DITTMAR: Yes, Your Honor.

8 THE COURT: We'll push Finney and reschedule
9 Valentine.

10 And, Mr. Valentine, I will once again make
11 arrangements to have you appear telephonically.

12 And, Mr. Shakoor, if you would like to appear
13 telephonically as well for that hearing, you are
14 welcome to do so.

15 MR. SHAKOOR: Thank you, Your Honor.

16 That's March 8th at 2:30?

17 THE COURT: Yes, sir.

18 THE DEFENDANT: Thank you very much, ma'am.

19 THE COURT: Okay, Mr. Valentine. Thank you,
20 Mr. Valentine. We'll talk to you then.

21 THE DEFENDANT: Thank you. Bye-bye.

22 THE COURT: Bye-bye.

23 MS. PARMER: Thank you, Your Honor.

24 THE COURT: Sure.

25 (Concluded at 11:26 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Mary E. Blazer, Registered Professional Reporter, AOC Circuit Court, hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

I further certify that I am not employed by or related to any of the parties in this matter, nor am I financially or otherwise interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand in Tampa, Hillsborough County, Florida, this 10th day of March, 2017.

Mary E. Blazer
Mary E. Blazer, RPR
AOC Circuit Court Reporter

IN THE SUPREME COURT OF FLORIDA

CRAIG ALAN WALL, SR.,

Appellant,

v.

CASE NO: SC19-1727

**LOWER CASE NO: 522010CF003759XXXXNO
POSTCONVICTION CAPITAL CASE**

STATE OF FLORIDA,

Appellee.

_____ /

APPENDIX TO SUPPLEMENTAL BRIEF

APPENDIX C

March 16, 2017 Order Granting Defendant's Pro Se Motion to Discharge Counsel and Appoint De Novo Conflict Free Counsel, filed in State of Florida v. Terance Valentine, Hillsborough County Case No.: 88-CF-12996

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

STATE OF FLORIDA

**CASE NO: 1988-CF-012996
DIVISION J**

v.

TERENCE GERALD VALENTINE

**ORDER GRANTING DEFENDANT'S PRO SE MOTION TO DISCHARGE COUNSEL
AND APPOINT DE NOVO CONFLICT FREE COUNSEL**

This Court, having considered the Defendant's *MOTION TO DISCHARGE CAPITAL COLLATERAL REGIONAL COUNSEL-MIDDLE BECAUSE OF AN IRRECONCILABLE CONFLICT AND FAILURE TO ACT AS DEFENDANT'S LEGAL COUNSEL AND TO APPOINT DE NOVO CONFLICT FREE COUNSEL*, CCRC-Middle's RESPONSE TO TRIAL COURT'S AUGUST 30, 2016 ORDER FOR POSTCONVICTION COUNSEL TO RESPOND, the STATE'S RESPONSE TO PRO SE MOTION TO DISCHARGE COUNSEL, CCRC-Middle's RESPONSE TO TRIAL COURT'S DECEMBER 8, 2016 ORDER FOR POSTCONVICTION COUNSEL TO RESPOND, and having heard argument of counsel, it is

HEREBY ORDERED and ADJUDGED:

1. Mr. Valentine is an indigent defendant who has been sentenced to death.
2. His court-appointed counsel, CCRC-Middle, has a conflict and is hereby discharged.
3. Having determined that Marie-Louise Samuels Parmer meets or exceeds the minimal requirements to represent a capital defendant in post-conviction proceedings in Florida courts, that Ms. Parmer has an established attorney-client relationship with Mr. Valentine, and that due to the unique set of facts in this case, the Court appoints Ms. Parmer in the interest of justice to represent Mr. Valentine in his capital postconviction proceedings in the above-styled case.
4. This Order is effective as of the oral pronouncement of appointment in Court of March 8, 2017.
5. Ms. Parmer must contract with the Florida Justice Administrative Commission in this cause and agrees to seek compensation at the rate established by the JAC. Ms. Parmer further agrees to abide by JAC practices in retaining co-counsel, expert and investigative

assistance.

6. Payment for Ms. Parmer's work, including all necessary and reasonable travel, is the responsibility of the Justice Administrative Commission.

DONE AND ORDERED at Tampa, Hillsborough County, Florida this 16th day of
March, 2017.

Electronically Conformed 3/16/2017_____

IN THE SUPREME COURT OF FLORIDA

CRAIG ALAN WALL, SR.,

Appellant,

v.

CASE NO: SC19-1727

LOWER CASE NO: 522010CF003759XXXXNO

POSTCONVICTION CAPITAL CASE

STATE OF FLORIDA,

Appellee.

_____ /

APPENDIX TO SUPPLEMENTAL BRIEF

APPENDIX D

April 7, 2017 Petition for Review of Nonfinal Order, filed in State of Florida v.
Terance Valentine, Florida Supreme Court Case No.: SC17-629

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO.: SC17-
Lower Tribunal No.: 88-CF-012996

TERANCE VALENTINE,

Respondent.

_____ /

PETITION FOR REVIEW OF NONFINAL ORDER

COMES NOW, the State of Florida, by and through undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.142(c), and hereby respectfully petitions this Court for review of a nonfinal order issued in a case in which the death penalty has been imposed. In support of this Petition the State would allege as follows:

Basis for Invoking Jurisdiction

This Court's jurisdiction to review nonfinal orders in cases where the death penalty has been imposed arises from Article V, Section 3(b)(1) of the Florida Constitution and Florida Rule of Appellate Procedure 9.142(c). See Trepal v. State, 754 So. 2d 702 (Fla. 2000). Such review is appropriate when the trial court issues an order which departs from the essential requirements of the law, for which there is no adequate remedy on appeal. In this case, Judge Sisco's erroneous ruling to discharge the Office of Capital

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Collateral Regional Counsel and appoint a new attorney violates Section 27.703, Florida Statutes, and Florida Rule of Criminal Procedure 3.851(b)(6), and will cause irreparable harm to the State. Accordingly, review should be granted.

Date and Nature of the Order to be Reviewed

The nonfinal order subject to review in this petition was rendered on March 16, 2017 (Ex. 1). The order discharges the Office of Capital Collateral Regional Counsel for the Middle Region of Florida [CCRC-M] as counsel of record for Respondent Valentine, and appoints private attorney Marie Louis Samuels-Parmer for all future representation of Valentine in state court.

Name of Lower Tribunal Rendering the Order

The nonfinal order subject to review in this petition was rendered by the Honorable Michelle Sisco, Circuit Court Judge for the Thirteenth Judicial Circuit, in the case of State v. Valentine, Case No. 88-CF-12996.

Procedural History

Terance Valentine was convicted of the 1988 first-degree murder of Ferdinand Porche, the attempted first-degree murder of Livia Romero, and other related offenses, and sentenced to death. Valentine v. State, 616 So. 2d 971 (Fla. 1993). Following retrial due to an error in jury selection, the same convictions and

sentences were imposed. On appeal, the attempted murder conviction was vacated, but the other convictions and the death sentence were affirmed. Valentine v. State, 688 So. 2d 313 (Fla. 1996), cert. denied, 522 U.S. 830 (1997). This Court described the following facts in its initial opinion:

Livia Romero married Terance Valentine while she was a teenager in Costa Rica and the couple emigrated to the United States in 1975, settled in New Orleans, and adopted a child. After seeking to divorce Valentine in 1986, Romero married Ferdinand Porche and the family moved to Tampa, where they began receiving telephoned threats from Valentine. On September 9, 1988, Valentine armed himself, forced his way into the family's home, wounded Porche, drove both Romero and Porche to a remote area and shot them. Romero survived and immediately told police Valentine was her assailant.

Several weeks after being released from the hospital, Romero began receiving telephone calls from Valentine, which she taped using a telephone and recorder supplied by police. Valentine was eventually arrested and charged with armed burglary, kidnapping, grand theft, first-degree murder and attempted first-degree murder. His motion to suppress a conversation taped on November 7 was denied; an edited tape was played for the jury; and the court subsequently declared a mistrial after the jury was unable to reach a unanimous verdict.

The entire fifteen-minute tape was played for the jury on retrial. Additional evidence included Romero's testimony and that of Porche's neighbor, who testified that on September 9 he saw two men sitting in a faded red and white or red and gray Ford Bronco parked opposite his house between 1 and 3 p.m. Nancy Cioll, a friend of Valentine's and Romero's, testified that about two weeks after the killing, Valentine visited her driving a maroon, gray and black Ford Bronco. She said he confessed to the shootings, demonstrated how he had shot Romero, and said he had made a mistake leaving Romero alive. Valentine's alibi defense that he was in Costa Rica at the time of the shootings was disbelieved by the jury and he was convicted on all counts. During the penalty

phase, Valentine represented himself and called his daughter and two friends to testify on his behalf.

Valentine, 616 So. 2d at 972. In the appeal following the retrial, the Court recited the trial court's description of the crimes:

On September 9, 1988, Ferdinand Porche returned to his home in mid-afternoon expecting to meet his pregnant wife and small child. Instead he was greeted by a bullet in the back which [severed his spinal cord and] rendered him paralyzed from the waist down. Mr. Porche was then confronted by Mr. Valentine who announced "this is my revenge." Mr. Porche was forced to crawl into a bedroom where he found his wife nude, bound, and gagged and his baby crying and covered in blood. Mr. Valentine then pistol whipped Mr. Porche. Mr. Porche's face was lacerated, his jaw was broken, and several teeth were knocked out. According to the medical examiner there were at least three separate blows to Mr. Porche's face. After administering this beating Mr. Valentine made his purpose clear, announcing, "I'm gonna kill you, but you're gonna suffer. This is not going to be easy." Further tortuous acts included stabbing Mr. Porche in the buttocks--the knife stopping only because it struck bone, kicking Mr. Porche in the chest, and dragging him after he was bound hand and foot with [baling] wire. The medical examiner testified that all of the above injuries occurred while Mr. Porche was alive, that none was immediately life threatening, and none would immediately result in a loss of consciousness. Mrs. Porche testified that Mr. Porche told her he was in so much pain that he did not know why he did not lose consciousness. Mrs. Porche testified she could feel him touch her as if to reassure her while they were in the back of the Blazer being transported [to an isolated area].

While the fatal gunshot resulted in near instantaneous loss of consciousness and death, the ordeal leading up to his death was quite lengthy. Mr. Porche was beaten and degraded in his home. Trussed like an animal he was kidnapped and taken on a nine-mile trip to his slaughter. Either due to the gunshot wound to his spine or through the stress of the ordeal Mr. Porche lost control of his bowels and was covered with his own excrement.

Paralyzed and bound hand and foot with wire there was nothing Mr. Porche could do to save himself. Nor was there anything he could do to protect his wife, who he knew was the ultimate object of Mr. Valentine's barbarous intent. Nor could he know what would happen to his ten-month-old daughter or what would become of Mrs. Porche's adopted child. The horror, terror and helplessness that Ferdinand Porche experienced prior to being shot in the eye at point blank range are evident.

Valentine, 688 So. 2d at 315-16.

At the 1994 penalty phase, Valentine waived the advisory jury recommendation and presented his mitigation directly to the trial judge. Id., at 315. The Honorable Diana Allen imposed a death sentence on Sept. 30, 1994. She found four aggravating factors: prior violent felony conviction based on the attempted murder conviction; committed during a burglary/kidnapping; heinous, atrocious or cruel; and cold, calculated and premeditated. Id., at 316 n.4. The court gave slight weight to the mitigating factors found, including Valentine's lack of prior violence, Valentine's work history and skills that could contribute to the prison system, Valentine's large family that will continue to love and support him, and Valentine's cooperation at his arrest and behavior as a model prisoner. Id., at 316 n.5.

As noted, this Court vacated the attempted murder conviction and sentence, but affirmed judgment and sentencing on all remaining counts. Valentine sought certiorari review in the United States

Supreme Court, and review was denied on October 6, 1997. Valentine v. Florida, 522 U.S. 830 (1997).

On April 9, 1998, attorneys John W. Moser and James H. Walsh of the Office of Capital Collateral Regional Counsel, Middle Region [CCRC-M] filed a Notice of Appearance (Ex. 2). A "shell" Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend was thereafter filed on May 28, 1998 (Ex. 3). The motion was signed by attorneys James Walsh and Linda McDermott, and verified by Valentine.

During this time, there were significant issues statewide regarding the funding of the three CCRC offices. On June 25, 1998, this Court directed the tolling of time frames in Florida Rules of Criminal Procedure 3.851 and 3.852. See Amendments to Florida Rules of Criminal Procedure - Capital Postconviction Public Records Production, 719 So. 2d 869 (Fla. 1998). On May 10, 1999, a new notice of appearance was filed by attorneys John W. Moser, Ronald S. Tulin, and James H. Walsh of CCRC-M (Ex. 4).

On July 16, 1999, following extensive public records litigation, attorney Tulin filed a Motion to Extend or Toll Filing Time for 3.850 Motion, noting that this Court had designated August 31, 1999, as the due date for Valentine's 3.850 motion (Ex. 5). The motion advised that counsel Tulin became aware on July 15, 1999, that Valentine's case was "being sent to the Registry for

substitution of counsel," and that his records were being prepared to transfer to substitute counsel. The motion also asserted that counsel believed Valentine wanted to waive the filing of any mitigation claims in his 3.850 motion, and would likely need to be evaluated for competency, requiring further brief delay.

On August 6, 1999, Judge Allen received a letter from Valentine, asking for relief from his relationship with CCRC-M, claiming their representation to be a charade and a waste of time, effort, and resources (Ex. 6).

On October 4, 1999, the trial judge entered an Order granting an extension of time and appointing attorney Nick J. Sinardi, Esquire, who met the "criteria set forth in F.S. 27.704(2) and has high ethical standards," to represent Valentine in his postconviction proceeding (Ex. 7). Numerous extensions of time were obtained and on May 14, 2001, attorney Sinardi filed Defendant's Motion to Vacate and Set Aside the Judgement of Conviction and Sentence with Attached Appendix (Ex. 8).¹

Following the filing of the State's response, Valentine wrote a letter to the trial judge on April 27, 2002, asking for the appointment of an investigator and/or the questioning of Mr. Sinardi as to his failure to cooperate with Valentine and hire his

¹ The 73-page motion is included as an exhibit to this Petition; however, due to volume, only an index to the appendix is attached.

own investigator (Ex. 9). Valentine felt that, with further assistance, he could "demonstrate the clearly lack of advocacy, the abuses of the district attorney and ineptitude of the attorneys in my case." The postconviction record then reflects that an Order was entered on October 28, 2002, which summarily denied a number of claims and granted an evidentiary hearing on twelve allegations of ineffective assistance of trial counsel (Ex. 10).² On March 23, 2003, Valentine sent another letter to the judge, again complaining of the representation provided by attorney Sinardi and asking for the court's assistance and attaching prior letters he had previously sent to Mr. Sinardi (Ex. 11).

Sinardi secured funds for the assistance of investigative experts in November, 2003, and in future orders (Ex. 12). Another letter of complaint by Valentine was received by the court dated March 19, 2004 (Ex. 13). An amendment to the postconviction motion was filed on August 3, 2005, and the evidentiary hearing was expanded to include the Claim XI(5), as amended (Ex. 14).

On October 12, 2005, Valentine filed a Motion to Withdraw Counsel, asserting that Mr. Sinardi had not been diligent but had been incompetent and deceptive in representing Valentine (Ex. 15).

² Although the postconviction record on appeal reflects that a number of hearings were held with Valentine present during this time, these do not appear to have been transcribed. Since Mr. Sinardi was later replaced as counsel, these hearings would have limited relevance to this petition.

Valentine also sent a letter of complaint to this Court on December 30, 2005, which this Court forwarded to Sinardi for a response (Ex. 16). Sinardi responded to this Court's inquiry in a letter, advising that a two hour in-camera hearing had been conducted on January 27, 2006, with regard to allegations made by Valentine. After taking testimony from all parties, the court "basically found that Mr. Valentine's allegations were unsubstantiated," and entered an order sealing the proceedings (Ex. 17). A circuit court order filed on May 18, 2006 permitted Sinardi to withdraw due to "irreconcilable differences" having arisen between Valentine and Sinardi (Ex. 18).

Attorney Daniel F. Daly was appointed to represent Valentine, effective February 23, 2006 (Ex. 19). On March 23, 2006, Valentine wrote a letter to the court, advising that he was not satisfied with Mr. Daly's lack of communication and seeking new counsel (Ex. 20). A similar letter was written on August 24, 2006, accusing Daly of being "another lazy, non-communicative, incompetent lawyer doing nothing" and expressing the need for "an eager qualified good postconviction advocate to help me litigate my case and not to be a facilitator nor an obstructionist" (Ex. 21). An amendment to the postconviction motion was filed by Daly on October 16, 2006 (Ex. 22). Valentine continued to express his displeasure at Mr.

Daly's performance to the trial court, to the Department of Financial Services, and to this Court (Ex. 23).

On April 4, 2007, a Motion to Withdraw was filed by Mr. Daly (Ex. 24). The motion asserted that Daly had received numerous complaints and threats from Valentine, and while Daly denied the allegations of ethical misconduct, he agreed he must withdraw from further representation as his client had discharged him, creating an actual conflict of interest.

On August 10, 2007, a Notice of Appearance was filed, asserting that Valentine was then represented by Capital Collateral Regional Counsel for the Middle Region Bill Jennings, and his assistants Richard E. Kiley, James V. Viggiano, and Ali Andrew Shakoor (Ex. 25). This team of attorneys filed Defendant's Amended Motion to Vacate and Set Aside the Judgment of Convictions and Sentences on July 31, 2008 (Ex. 26). This motion supplemented the prior claims and offered additional allegations of ineffective assistance of counsel at the penalty phase of Valentine's trial, cumulative error, and possible incompetence at execution. Following response by the State, the court issued an order denying the claim of incompetence at execution, granting an evidentiary hearing on the claim of ineffective assistance of penalty phase counsel, and reserving ruling on the cumulative error claim (Ex. 27).

On October 7, 2008, a letter was filed that Valentine had written to the trial judge, expressing his displeasure with CCRC-M as his attorneys. He complained that they only seemed interested in sentencing issues, they were rushing his case, had subjected him to an unnecessary battery of tests, refused to travel to Costa Rica at his request, and been disrespectful and sarcastic (Ex. 28).

The evidentiary hearing was conducted October 13-14, 2008, and continued on July 22, 2009. Evidence was offered on issues initially presented by Mr. Sinardi as well as the amended motion filed by CCRC-M. Valentine's motion was denied on July 2, 2010 (Ex. 29). On appeal, this Court affirmed the denial of postconviction relief. Valentine v. State, 98 So. 3d 44 (Fla. 2012). A state petition for writ of habeas corpus was denied in the same opinion. Valentine, 98 So. 3d at 57-58.

This Court's mandate issued on October 2, 2012. Valentine timely filed a Petition for Writ of Habeas Corpus in the United States District Court, Middle District of Florida, on January 3, 2013. Valentine v. Secretary, Dept. of Corrections, Case No. 8:13-cv-30-T-23TBM.

Although Valentine was personally served with the pleadings filed by his attorneys in federal court, he did not contact the district court with any complaint about counsel or the petition as

filed until 2015. By that time, the State had moved to strike several claims in the petition, and the district court agreed that some of the claims were improperly presented and dismissed them.

Attorney Marie Louis Samuels-Parmer was also an attorney at CCRC-M during the time of Valentine's state and federal collateral proceedings, but she never appeared as counsel in his case. She left CCRC-M in April, 2014. On July 1, 2015, she filed a Motion for Substitution and/or Appointment of Conflict Free Counsel in the federal district court, alleging that her former colleagues at CCRC-M had not effectively represented Valentine in his state postconviction proceedings, as their presentation of Valentine's claim that his trial attorneys rendered ineffective assistance was incomplete and inadequate (Ex. 30). Although she did not identify any potentially meritorious claims that had been omitted from that litigation, she asked to be appointed as counsel for his habeas case in order to investigate and present new allegations of ineffective assistance of trial counsel.

The district court denied the motion to substitute counsel, finding the legal analysis to be flawed (Ex. 31). Ms. Parmer filed a motion to reconsider the ruling and Valentine filed a *pro se* motion repeating the request. On August 12, 2015, the district court *sua sponte* issued an Order which stayed and administratively closed the case, in light of the United States Supreme Court's

ruling to accept certiorari review in Hurst v. Florida, 135 S. Ct. 1531 (2015) (Ex. 32). The stay was dissolved on June 24, 2016, and Attorney Shakoor from CCRC-M filed a request on June 27, 2016, seeking to reinstate the stay until this Court resolved the case of Lambrix v. State, Case No. SC16-56, addressing Hurst, and also reiterating that Shakoor did not object to the change of counsel that had been requested by Ms. Parmer (Ex. 33). Ms. Parmer also filed a renewed motion to alter or amend the previous denial of her request for appointment (Ex. 34). On January 12, 2017, the district court granted Shakoor's motion, and again stayed and administratively closed the case (Ex. 35).

Additionally, on July 28, 2016, Valentine filed a *pro se* petition for writ of habeas corpus in the trial court below (Ex. 36). The petition asserted that relief was necessary because the State had continually misled the court and Valentine's jury about Livia Porche's true marital status and identity. The petition also claimed that the Chevrolet Blazer which Valentine had been convicted of stealing was actually his vehicle, under the community property laws of Louisiana, where he and Livia were living at the time of the purchase. Notably, trial counsel had advised Valentine as to why the argument on the Blazer would not succeed in a letter sent June 3, 1994, prior to trial (Ex. 37). In addition, although his initial postconviction attorney had advised him in 1999 that

the "identity of your former wife was clearly established and the issue is barred" (Ex. 38), both the Blazer issue and the purported misconduct by the State with regard to the identity of Livia Porche were litigated in postconviction. See Valentine, 98 So. 3d at 50 n.8, 51-52. At any rate, this petition was stricken by the trial court on October 10, 2016 as an unauthorized, *pro se* pleading (Ex. 39).

Facts Supporting Nonfinal Review

On December 8, 2016, the trial court issued an Order requesting a response to a *pro se* motion filed by Valentine seeking to discharge CCRC-M based on a purported irreconcilable conflict and requesting the appointment of new, conflict-free counsel, "if possible, Miss Marie Louis Samuels-Parmer, Esquire" (Ex. 40, order with motion attached). The *pro se* motion claimed that the prosecutor had fabricated material evidence, violating Giglio v. United States, 405 U.S. 150 (1972), although the supposedly false evidence is not generally or specifically identified. Valentine also asserted that there was an actual conflict because CCRC refused to set forth meritorious issues which would defeat his conviction, although the supposedly meritorious issues are not generally or specifically identified. The motion did specifically allege that CCRC had refused to make corrections in his postconviction appeal and had changed the nomenclature of the

exhibits, committed citation mistakes, and submitted incoherent arguments. He asserted that a Nelson hearing may be required, as CCRC had failed to appeal any of the issues denied at the Huff hearing "nor reinforced those granted." Citing Martinez v. Ryan, 132 S. Ct. 1309 (2012), he claimed an actual conflict "because CCRC rendered IAC during the initial post-conviction proceeding." He observed that he had written letters to CCRC telling them to cease and desist and that last year, in federal court, CCRC-M had ignored him when his Embassy tried to secure legal representation for him. Among the attachments to the motion was a list of 107 different people that Valentine had written to between 2012 and 2016, "soliciting legal help and or financial help," including at #102, Miss Marie-Louise Samuels Parmer.

The State filed a response, asserting that Valentine's motion should be denied as no actual conflict of interest had been identified, as required by Florida Rule of Criminal Procedure 3.851(b)(6) (Ex. 41). The State also observed that in the event the trial court found a conflict to exist, it would not be appropriate to appoint Ms. Parmer since she was employed by CCRC-M at the time of the alleged conflict. Attorney Shakoor filed a response which did not identify an actual conflict but indicated that in light of Valentine's refusal to meet with his CCRC

attorneys or accept mail from them, he "does not disagree that 'conflict-free' counsel would be appropriate" (Ex. 42).

The trial court held a hearing on the motion on February 23, 2017 (Ex. 43). Ms. Parmer appeared at the hearing, and Valentine and Mr. Shakoor participated telephonically. Judge Sisco asked if Valentine was asserting a conflict with CCRC-M due to an allegation of a missed deadline in federal court, and Valentine responded no, that the conflict of interest existed because "they misrepresent me and what I needed to do in court. They have lied to me and have not been prepared," speaking of Mr. Shakoor. Valentine asserted that they only discovered two issues, and never touched the other eleven issues that were granted by Judge Barbas in postconviction.

The court then asked if Ms. Parmer was willing and available to take the case, and she indicated that she was. Ms. Parmer observed that she had filed pleadings in federal court seeking to be appointed in Valentine's case, and that Valentine was unable to retain her on his own. She advised that she was not currently on the state registry. Mr. Shakoor responded that, while he disagreed with a lot of Valentine's assertions, it would not be proper for him to attack the merits of what his client had written. He suggested that Valentine would be best served by counsel with whom Valentine would be willing to meet and converse. Shakoor also noted that Valentine refused to come out for attorney visits and returned

any mail they sent. He indicated he would like to discuss Hurst-related matters with Valentine.

Judge Sisco noted that, under the statute, if she did find an actual conflict, she was supposed to appoint another CCRC office. But practically speaking, when that was done in the past, she had received significant pushback based on the workload and having to travel the distance to Tampa for litigation. She concluded if there was an attorney competent and willing to be appointed, and the defendant wanted them appointed, "what's the problem?" The State responded, pointing out Valentine's history of dissatisfaction with his attorneys, and arguing that there had been no showing of an actual conflict of interest as required. The State also expressed concern that Ms. Parmer's prior employment with CCRC-M would create a basis for Valentine to come back to court in later years and seek new counsel.

The court asked Ms. Parmer about that issue, and Ms. Parmer suggested that Valentine would be willing to waive any potential conflict based on her prior employment. Ms. Parmer suggested there had been actual issues identified in the federal district court where the CCRC-M lawyers failed to conduct a reasonable investigation into guilt and penalty phase issues, but asserted that until she was appointed, she could not thoroughly investigate those claims. Ms. Parmer also advised the court that she worked

part-time with CCRC-South, and that her efforts in this case started when she was contacted by the ambassador of Costa Rica. She represented that over the course of approximately two years, she had communicated with Valentine and discussed his case on a pro bono basis.

The court then addressed Valentine, making sure that he understood the only way she would consider appointing Ms. Parmer was if he agreed to waive any potential conflict, and he agreed to do so. Judge Sisco asked Valentine if Mr. Shakoor had properly represented that he refused to meet with them and returned their mail, and Valentine agreed. Valentine stated that he wanted nothing to do with CCRC-M, because they were liars. He claimed that they used the same arguments in every case and did not care what the real issues were. But, he continued, he and Ms. Parmer "talk all the time" and he felt very comfortable discussing anything with her. The court indicated that she was inclined "in the interest of equity" to appoint Ms. Parmer "just to keep the case moving," although she didn't know if it "technically" fit within the statute. She did not see a downside to appointing Ms. Parmer, and took a quick break to speak with her staff attorneys.

After the break, Judge Sisco asked Ms. Parmer if she would be assigned the case, should CCRC-South be appointed, and Ms. Parmer could not speak to that as an administrative issue. Parmer noted

that she was already at full capacity with her caseload at CCRC-South. She offered to speak with CCRC-South about the issue and to seek to apply to get on the registry, and was willing to abide by JAC rates and rules, with which she was familiar. The court indicated she was "sympathetic to Mr. Valentine's intention" and really wanted him to have a lawyer that he was comfortable with and willing to communicate and work with. The court then scheduled a hearing for March 8, 2017, so that Ms. Parmer could look into the issues of representing Valentine through CCRC-South or as registry counsel.

The next hearing was held as scheduled on March 8, 2017 (Ex. 44). Mr. Shakoor was again present telephonically, and Judge Sisco indicated that she had not arranged for Valentine to be called, but she would get an update and set another hearing to keep Valentine informed of the proceedings. Ms. Parmer then reported that CCRC-S would not agree to assign Valentine's case to her, should that office be appointed, because she was already at maximum capacity with that office. She had researched getting onto the registry, and understood that once she had been appointed, they would execute a contract with her within 30 days. Thereafter, Judge Sisco determined that she would be qualified to serve under the registry, and put Ms. Parmer under oath to verify her background and experience. The State suggested that the court consider

appointing Ms. Parmer for the limited purpose of determining whether an actual conflict existed prior to discharging CCRC-M, but Ms. Parmer expressed concerns about any limitations on her appointment and the court declined to impose any. Ms. Parmer reiterated that the ambassador had reached out to her in this case based on work she was doing in other cases, and the court found that was a very fact specific reason to appoint Ms. Parmer and discharge CCRC-M. Judge Sisco advised Ms. Parmer to submit a proposed order to the court reflecting her ruling. The court scheduled another hearing for March 23, 2017, in order to have Valentine on the phone once more to make sure there would be no further issues down the road.

Thereafter, Ms. Parmer submitted a proposed order, which Judge Sisco signed on March 16, 2017, and is the subject of this petition. The order declares that CCRC-Middle "has a conflict and is hereby discharged" (Ex. 1).

At the March 23, 2017, hearing, Valentine again appeared by phone and again agreed that he would waive any potential conflict with Ms. Parmer, and that he wanted her to be appointed (Ex. 45). Upon being advised that the State intended to seek interlocutory review of her order discharging CCRC-M, Judge Sisco scheduled a status hearing for June 8, 2017, providing this Court an opportunity for review.

Argument

I. The Order departs from the essential requirements of the law.

Florida law governing the appointment of new counsel in capital collateral proceedings is well settled and not subject to dispute. In accordance with Chapter 27 and Florida Rule of Criminal Procedure 3.851(b)(6), counsel can only be dismissed if Valentine demonstrates that an actual conflict of interest exists. As his motion failed to identify any actual conflict, it should have been denied.

In order to establish an actual conflict of interest, a defendant must show that his attorney is actively representing conflicting interests. § 27.703, Fla. Stat.; Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); Hunter v. State, 817 So. 2d 786, 792 (Fla. 2002). Generally, such a conflict occurs when an attorney represents two defendants, and "one defendant stands to gain significantly by counsel adducing probative evidence or advancing plausible arguments that are damaging to the cause of a codefendant whom counsel is also representing." Johnson v. State, 78 So. 3d 1305, 1308-09 (Fla. 2012), quoting Foxworth v. Wainwright, 516 F.2d 1072, 1076 (5th Cir. 1975); Scott v. State, 991 So. 2d 971, 976-77 (Fla. 1st DCA 2008). A conflict can also arise based on excessive caseload, where the necessary prejudice has been

demonstrated. See Public Defender, 11th Circuit v. State, 115 So. 3d 261, 279 (Fla. 2013). Valentine's request for new counsel below did not assert either multiple representations or an excessive caseload to establish a conflict of interest in this case.

Conflict can also be based on attorney having missed a deadline, or committing some other egregious error which would require the attorney to admit his own ineffectiveness in order to adequately represent the defendant. Christeson v. Roper, 135 S. Ct. 891, 895 (2015). In this case, Valentine's federal habeas petition was timely filed. He has not missed any critical deadline, and has not been precluded any review due to any actions or inactions of counsel. While Valentine asserts a possibility that some meritorious claim may have been overlooked, he has not identified any such claim, and apparently seeks new counsel now only as a precaution, seeking to investigate his case anew and to determine whether any such overlooked, meritorious claim exists. However, suspicion and speculation that an unidentified claim needs to be presented falls far short of the actual conflict required for the appointment of new counsel under Section 27.703 and Rule 3.851.

The response filed by CCRC-M in this case concludes that Valentine's current attorney "does not disagree that 'conflict-free' counsel would be appropriate," but it also does not identify

any specific conflict. Instead, it cites to Valentine's refusal to meet with his attorneys or to accept legal mail from them. This confirms that Valentine is the one creating any potential conflict by his own actions. This Court should not countenance defendants seeking to manipulate the system by refusing to accept the attorneys appointed to represent them.

The provision of counsel for Valentine at taxpayer expense at this stage of his case is purely a matter of statutory grace. Valentine is well into the "postconviction capital collateral proceedings," to which he is entitled under Section 27.711(c). He has no constitutional right to counsel, since the Sixth Amendment only applies to the actual trial. Martinez v. Court of Appeal, 528 U.S. 152 (2000). However, the State of Florida has determined that all capital defendants at the postconviction stage should be provided counsel, "so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality with which they are entitled in the interests of justice." § 27.7001, Fla. Stat.

In order to achieve the goals identified in Chapter 27, the legislature has established strict limits on a capital defendant's statutory right to representation. In this case, despite the fact

that Valentine's sentence was final long before Ring v. Arizona, 536 U.S. 584 (2002), and that he waived his right to a penalty phase jury, current counsel at CCRC-M secured a stay of his case in federal court and prepared a successive motion for postconviction relief to assert a claim under Hurst v. Florida, 136 S. Ct. 616 (2016), on his behalf. Valentine refused to meet with his attorney to discuss the issue, and should not be granted new counsel to pursue this or any other potential litigation.

Moreover, Section 27.703(1) expressly requires that upon determining the existence of an actual conflict of interest, the sentencing court "shall ... designate another regional counsel," and it is only after replacement regional counsel alleges an actual conflict that the court is authorized to appoint a member of the Florida Bar "who meets the requirements of Section 27.704(2)." While Judge Sisco indicated that she has previously received "pushback" when appointing other cases to other regional counsel offices, it was contrary to Chapter 27 and premature, at best, to appoint a Florida Bar member that was not even on the attorney registry before permitting one of the other regional counsels to determine whether an actual conflict with the replacement office existed.

The lower court's finding of a conflict is based entirely on Valentine's refusal to meet with his current attorneys. Such

circumstances do not satisfy the standards of Chapter 27 or Rule 3.851. As in Miller v. State, 921 So. 2d 816 (Fla. 4th DCA 2006) and Boudreau v. Carlisle, 549 So. 2d 1073 (Fla. 4th DCA 1989), this type of self-created conflict should not be rewarded. The motion filed below seeking to discharge CCRC-M should have been denied, and this Court should vacate the order granting new counsel on this basis.

II. There is no adequate remedy on appeal.

In addition, there is no adequate remedy on appeal. As there is no currently pending postconviction action in the lower court, there is no basis for any appeal. While attorney Parmer has indicated she believes she will be able to establish that Valentine's prior collateral attorneys all performed deficiently, even such a finding would not result in the filing of a state motion for postconviction relief. As this Court has observed, Martinez v. Ryan, 132 S. Ct. 1309 (2012), is a decision which grants federal habeas petitioners a vehicle to review barred or unexhausted claims of ineffective assistance of counsel where the initial postconviction attorney has been deemed ineffective for failing to raise a meritorious issue. See Finney v. State, 192 So. 3d 36 (Fla. 2015); Mann v. State, 112 So. 3d 1158 (Fla. 2013); Gore v. State, 91 So. 3d 769, 778 (Fla. 2012) ("It appears that Martinez is directed toward federal habeas proceedings and is

designed and intended to address issues that arise in that context"). It provides no basis for the filing of any new state court pleading.

Although Ms. Parmer indicated an intent to adopt Valentine's *pro se* habeas petition at the last status hearing without having reviewed it, once Ms. Parmer reviews the record and observes that the issues identified in that petition have been fully litigated, she will conclude that there are no reasonable grounds to pursue any issue and presumably decline to unethically file a frivolous pleading. Accordingly, no appellate review will be undertaken.

Clearly, if Ms. Parmer is successful in discovering a meritorious claim that was not previously presented, her only avenue of relief is in federal court. As no state court proceeding will be undertaken subject to an appeal, the improper order entered below discharging CCRC-M will be unreviewable, absent consideration of this petition.

Nature of Relief Sought

In conclusion, the State respectfully requests that this Honorable Court enter a ruling VACATING the Order issued below discharging CCRC-M and appointing attorney Parmer as counsel of record for Respondent Valentine.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

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COUNSEL FOR THE STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal system which will send a notice of electronic filing to the following: Richard Kiley, James V. Viggiano, Jr., Ali Andrew Shakoor, Assistant CCRC-M, 3801 Corporex Park Drive, Suite 21, Tampa, Florida 33619-1136, **kiley@ccmr.state.fl.us,** **viggiano@ccmr.state.fl.us,** **shakoor@ccmr.state.fl.us,** **cbus03@gmail.com,** and **support@ccmr.state.fl.us;** Marie-Louise Samuels Parmer, Post Office Box 18988, Tampa, Florida 33679-8988, **marie@samuelsparmerlaw.com;** The Honorable Michelle D. Sisco, 401 North Jefferson Street, Room #102, Tampa, Florida 33602,

heckshsl@fljud13.org; Christopher N. Moody, Assistant State Attorney, 800 East Kennedy Boulevard, Floor 5, Tampa, Florida 33602-4148, **moody_c@saol3th.com**; and I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. mail to the following: Terance G. Valentine, DC# 119682, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026-4000.

/s/ Carol M. Dittmar
COUNSEL FOR THE STATE OF FLORIDA

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in the foregoing is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ Carol M. Dittmar
COUNSEL FOR THE STATE OF FLORIDA

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO.: SC17-_____
Lower Tribunal No.: 88-CF-012996

TERANCE VALENTINE,

Respondent.

INDEX TO APPENDIX TO
PETITION FOR REVIEW OF INTERLOCUTORY ORDER

- Ex. 1 Order Granting Defendant's Pro Se Motion to Discharge Counsel and Appoint De Novo Conflict Free Counsel, March 16, 2017.
- Ex. 2 Notice of Appearance, attorneys John W. Moser and James H. Walsh of CCRC-M, April 9, 1998.
- Ex. 3 Motion to Vacate Judgement of Conviction and Sentence with Special Request for Leave to Amend, May 28, 1998.
- Ex. 4 Notice of Appearance, attorneys John W. Moser, Ronald S. Tulin, and James H. Walsh of CCRC-M, May 10, 1999.
- Ex. 5 Motion to Extend or Toll Filing Time for 3.850 Motion, July 16, 1999.
- Ex. 6 Letter to Judge Allen from Valentine, August 6, 1999.

- Ex. 7 Order granting an extension of time and appointing attorney Nick J. Sinardi, Esquire, October 4, 1999.
- Ex. 8 Defendant's Motion to Vacate and Set Aside the Judgement of Conviction and Sentence with Attached Appendix, May 14, 2001.
- Ex. 9 Letter to Judge Barbas from Valentine, April 27, 2002.
- Ex. 10 Order Denying, in Part, Defendant's Motion to Vacate and Set Aside the Judgment of Conviction and Sentence, October 28, 2002.
- Ex. 11 Letter to Judge Barbas from Valentine, with attachments, March 23, 2003.
- Ex. 12 Order Granting Motion to Incur Expert's Costs, November 18, 2003, and similar later orders.
- Ex. 13 Letter to Judge Barbas from Valentine, March 19, 2004.
- Ex. 14 Amendment to Defendant's Motion to Vacate and Set Aside Judgment of Conviction and Sentence August 3, 2005, and Amended Order Granting Evidentiary Hearing, April 4, 2005.
- Ex. 15 Pro Se Motion to Withdraw Counsel, October 12, 2005.
- Ex. 16 Letter to Florida Supreme Court from Valentine, December 30, 2005, with Letter from Florida Supreme Court for Response.

- Ex. 17 Letter to Florida Supreme Court from Sinardi April 28, 2006.
- Ex. 18 Order Allowing Attorney to Withdraw, May 18, 2006.
- Ex. 19 Order Appointing Counsel, Daniel F. Daly, Esquire, effective February 23, 2006, filed on July 12, 2006.
- Ex. 20 Letter to Judge Barbas from Valentine, March 23, 2006.
- Ex. 21 Letter to Judge Barbas from Valentine, August 24, 2006.
- Ex. 22 Amendment to Motion to Vacate Judgment and Sentence, October 16, 2006.
- Ex. 23 Letter to Circuit Court from Department of Financial Services, April 3, 2007, with attachments, and Letter to Valentine from Florida Supreme Court, April 30, 2007, with attachments.
- Ex. 24 Motion to Withdraw, April 4, 2007.
- Ex. 25 Notice of Appearance, Capital Collateral Regional Counsel - Middle Region, Bill Jennings, August 10, 2007.
- Ex. 26 Amended Motion to Vacate and Set Aside the Judgment of Convictions and Sentence, July 31, 2008.

- Ex. 27 Order Denying in Part Defendant's Amended Motion to Vacate and Set Aside the Judgment of Convictions and Sentence, October 6, 2008.
- Ex. 28 Letter to Judge Barbas from Valentine, October 7, 2008.
- Ex. 29 Order Denying Defendant's Motion to Vacate and Set Aside the Judgment of Conviction and Sentence, July 2, 2010.
- Ex. 30 Petitioner's Motion for Substitution and/or Appointment of Conflict Free Counsel filed Marie Louis Samuels-Parmer, July 1, 2015.
- Ex. 31 United States District Court Order, July 10, 2015.
- Ex. 32 United States District Court Order, August 12, 2015.
- Ex. 33 Petitioner's Motion to Reinstate the Stay or Reset the Briefing Schedule and for Leave to File a Reply to Response in Excess of the Page Limits, June 27, 2016.
- Ex. 34 Petitioner's Renewed Motion to Alter or Amend this Court's Judgment Denying Motion for Conflict-Free Counsel, June 27, 2016.
- Ex. 35 United States District Court Order, January 12, 2017.
- Ex. 36 *Pro se* Petition for Writ of Habeas Corpus, July 28, 2016.

- Ex. 37 Letter to Valentine from Attorney Unterberger, June 3, 1994.
- Ex. 38 Letter to Valentine from Attorney Walsh, June 30, 1999.
- Ex. 39 Order Striking Petition for Writ of Habeas Corpus, October 10, 2016, with attachment.
- Ex. 40 Order to Respond to Defendant's *Pro Se* Motion to Discharge Capital Collateral Regional Counsel-Middle, December 8, 2016.
- Ex. 41 State's Response to *Pro Se* Motion to Discharge Counsel, January 6, 2017.
- Ex. 42 Attorney Shakoor's Response to *Pro Se* Motion to Discharge Counsel, January 4, 2017.
- Ex. 43 Transcript of Hearing, February 23, 2017.
- Ex. 44 Transcript of Hearing, March 8, 2017.
- Ex. 45 Transcript of Hearing, March 23, 2017.

Respectfully submitted,

PAMELA JO BONDI
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COUNSEL FOR THE STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal system which will send a notice of electronic filing to the following: Richard Kiley, James V. Viggiano, Jr., Ali Andrew Shakoor, Assistant CCRC-M, 3801 Corporex Park Drive, Suite 21, Tampa, Florida 33619-1136, **kiley@ccmr.state.fl.us,** **viggiano@ccmr.state.fl.us,** **shakoor@ccmr.state.fl.us,** **cbus03@gmail.com,** and **support@ccmr.state.fl.us;** Marie-Louise Samuels Parmer, Post Office Box 18988, Tampa, Florida 33679-8988, **marie@samuelsparmerlaw.com;** The Honorable Michelle D. Sisco, 401 North Jefferson Street, Room #102, Tampa, Florida 33602, **heckshsl@fljud13.org;** Christopher N. Moody, Assistant State

Attorney, 800 East Kennedy Boulevard, Floor 5, Tampa, Florida 33602-4148, **moody_c@saol3th.com**; and I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. mail to the following: Terance G. Valentine, DC# 119682, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026-4000.

/s/ Carol M. Dittmar
COUNSEL FOR THE STATE OF FLORIDA

IN THE SUPREME COURT OF FLORIDA

CRAIG ALAN WALL, SR.,

Appellant,

v.

CASE NO: SC19-1727

**LOWER CASE NO: 522010CF003759XXXXNO
POSTCONVICTION CAPITAL CASE**

STATE OF FLORIDA,

Appellee.

_____ /

APPENDIX TO SUPPLEMENTAL BRIEF

APPENDIX E

September 20, 2017 Florida Supreme Court Order, filed in State of Florida v.
Terance Valentine, Florida Supreme Court Case No.: SC17-629

Supreme Court of Florida

WEDNESDAY, SEPTEMBER 20, 2017

CASE NO.: SC17-629
Lower Tribunal No(s):
291988CF012996000AHC

STATE OF FLORIDA

vs. TERANCE VALENTINE

Petitioner(s)

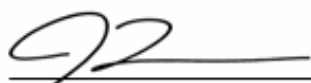
Respondent(s)

The State's Petition for Review of Non-Final Order is hereby denied.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,
IF FILED, DETERMINED.

LABARGA, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, and
LAWSON, JJ., concur.
QUINCE, J., recused.

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



cd
Served:

RICHARD E. KILEY
JAMES VINCENT VIGGIANO, JR.
MARIE-LOUISE SAMUELS PARMER
LISA MARTIN
ALI ANDREW SHAKOOR
HON. PAT FRANK, CLERK
HON. MICHELLE SISCO, JUDGE
CHRISTOPHER N. MOODY