

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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Pursuant to Florida Rule of Criminal Procedure 3.851

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APPENDIX J October 23, 2019 Notice of Appeal

Respectfully submitted,

/s/ Adrienne Joy Shepherd
Adrienne Joy Shepherd
Assistant CCRC
Florida Bar Number 1000532
Email: shepherd@ccmr.state.fl.us

/s/ Ali Shakoor
Ali Shakoor
Assistant CCRC
Florida Bar Number 0669830
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/s/ Lisa Marie Bort
Lisa Marie Bort
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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 INITIAL BRIEF

APPENDIX A

March 15, 2018 Florida Supreme Court Order Appointing Capital Collateral
Regional Counsel

Supreme Court of Florida

THURSDAY, MARCH 15, 2018

CASE NO.: SC16-1221

Lower Tribunal No(s):
522010CF003759XXXXNO

CRAIG ALAN WALL, SR.

vs. STATE OF FLORIDA

Appellant(s)

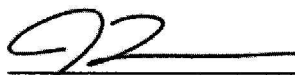
Appellee(s)

Pursuant to Florida Rule of Criminal Procedure 3.851(b), the Office of the Capital Collateral Regional Counsel-Middle Region is hereby appointed to handle postconviction proceedings for appellant.

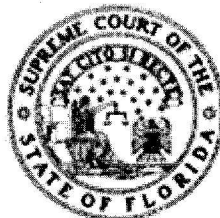
The Office of the Capital Collateral Regional Counsel-Middle Region shall, within thirty days from this date of this order, file a notice of appearance in the trial court or a motion to withdraw based on a conflict of interest or some other legal ground. **A copy of the notice of appearance or motion to withdraw shall be served on the Florida Supreme Court.**

In accordance with this Court's opinion issued in Amendments to Florida Rules of Criminal Procedure 3.851, 3.852, and 3.991, and Florida Rule of Judicial Administration 2.215, 802 So. 2d 298 (Fla. 2001), the chief judge shall forthwith assign this case to a judge qualified to handle capital cases. **A copy of the assignment order shall be served on the Florida Supreme Court.**

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



CASE NO.: SC16-1221

Page Two

cd

Served:

MARILYN MUIR BECCUE

C. SUZANNE BECHARD

JULIUS J. AULISIO

HON. KEN BURKE, CLERK

KENDALL S. DAVIDSON

JAMES VINCENT VIGGIANO, JR.

HON. PHILIP JAMES FEDERICO, JUDGE

HON. ANTHONY RONDOLINO, CHIEF JUDGE

JOHN E. SWISHER

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 INITIAL BRIEF

APPENDIX B

March 29, 2018 Notice of Appearance of Post-Conviction Capital Collateral
Regional Counsel

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**CASE NO: CRC10-03759CFANO
POST-CONVICTION CAPITAL CASE**

CRAIG ALAN WALL, SR.

Defendant.

NOTICE OF APPEARANCE
OF POST-CONVICTION CAPITAL COLLATERAL COUNSEL

Please take notice that in accordance with the Supreme Court of Florida's order appointing the Law Office of the Capital Collateral Regional Counsel-Middle Region dated Thursday, March 15, 2018, Raheela Ahmed, Assistant Capital Collateral Counsel, Maria Christine Perinetti, Assistant Capital Collateral Counsel, and Lisa Marie Bort, Assistant Capital Collateral Counsel hereby enter their appearances as counsel in the above-captioned action. The official status of counsel in the instant case should reflect the following:

JAMES VINCENT VIGGIANO, JR.
CAPITAL COLLATERAL REGIONAL COUNSEL - MIDDLE

RAHEELA AHMED
ASSISTANT CCRC
(LEAD COUNSEL)

MARIA CHRISTINE PERINETTI
ASSISTANT CCRC
(LEAD COUNSEL)

LISA MARIE BORT
ASSISTANT CCRC

Respectfully submitted

/s/ Raheela Ahmed

Raheela Ahmed

Florida Bar Number 0713457

Assistant CCRC

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/s/Maria Christine Perinetti

Maria Christine Perinetti

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/s/ Lisa Marie Bort

Lisa Marie Bort

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Regional Counsel - Middle Region

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the PDF document of the foregoing **Notice of Appearance of Post-Conviction Capital Collateral Counsel** has been transmitted to this Court through the Florida Courts E-Filing Portal on this 29th day of March, 2018.

I HEREBY FURTHER CERTIFY that a copy of the PDF document of the foregoing has also been served upon the Clerk for the **Supreme Court of Florida**, through the Florida Courts E-Filing Portal on this 29th day of March, 2018.

I HEREBY FURTHER CERTIFY that a copy of the PDF document of the foregoing has been served via the Florida Courts E-Filing Portal to **C. Suzanne Bechard and Marilyn Muir Beccue**, Assistant Attorney General, Office of the Attorney General, **Sara Elizabeth Macks**, Assistant State Attorney, Office of the State Attorney for the Sixth Judicial Circuit, to **Bjorn E. Brunvand, Esquire**, to **Ronald James Kurpiers, II, Esquire**, to **Amanda P. Sellers, Esquire**, to **Jenna C. Finkelstein, Esquire**, to **Daniel M. Hernandez, Esquire**, to **William Brian Bennett, Esquire**, and to the **Honorable Robert Henry Dillinger** Public Defender, Office of the Public Defender for the Sixth Judicial Circuit, on this 29th day of March, 2018.

I HEREBY FURTHER CERTIFY that a copy of the foregoing has been sent via the Florida Courts E-Filing Portal and also mailed to the **Honorable Philip J. Frederico**, Circuit Court Judge, Sixth Judicial Circuit, 14250 49th Street North, Clearwater, Florida 33762, and a copy has been mailed to **Mr. Craig Wall, Sr.**, DOC# 140726, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on this 29th day of March, 2018.

Respectfully submitted

/s/ Raheela Ahmed

Raheela Ahmed

Florida Bar Number 0713457

Assistant CCRC

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/s/Maria Christine Perinetti

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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 INITIAL BRIEF

APPENDIX C

June 18, 2018 Motion to Withdraw Counsel [Raheela Ahmed]

**N THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**CASE NO: CRC10-03759CFANO
POST-CONVICTION CAPITAL CASE**

CRAIG ALAN WALL, SR.

Defendant.

MOTION TO WITHDRAW COUNSEL
[RAHEELA AHMED]

Undersigned counsel, Raheela Ahmed, has tendered her resignation from the Law Office of the Capital Collateral Regional Counsel – Middle and will no longer be counsel of record as of June 30, 2018, for the Defendant, Mr. Craig A. Wall, Sr. Mr. Wall, Sr. respectfully moves for the Court to remove Attorney Raheela Ahmed as counsel of record as of June 30, 2018, and to add Adrienne Joy Shepherd as additional counsel.

The official status of counsel for Mr. Wall in this case should now reflect as follows:

ADRIENNE JOY SHEPHERD

Florida Bar No. 1000532

Assistant Capital Collateral Regional Counsel for the Middle Region of Florida
shepherd@ccmr.state.fl.us
support@ccmr.state.fl.us

MARIA CHRISTINE PERINETTI

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LISA MARIE BORT

Florida Bar No. 0119074

Assistant Capital Collateral Regional Counsel for the Middle Region of Florida
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the PDF document of the foregoing has been transmitted to this Court through the Florida Courts E-Filing Portal on this 18th day of June, 2018.

I HEREBY FURTHER CERTIFY that a copy of the PDF document of the foregoing has been served via the Florida Courts E-Filing Portal to **Marilyn Muir Beccue**, Assistant Attorney General, Office of the Attorney General, and to **Sara Elizabeth Macks**, Assistant State Attorney, Office of the State Attorney for the Sixth Judicial Circuit, on this 18th day of June, 2018.

I HEREBY FURTHER CERTIFY that a copy of the foregoing has been sent via the Florida Courts E-Filing Portal and electronic mail (Judicial Assistant) to the **Honorable Philip J. Federico**, Circuit Court Judge, Sixth Judicial Circuit, 14250 49th Street North, Clearwater, Florida 33762, and a copy has been mailed to **Mr. Craig Wall, Sr.**, DOC# 140726, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on this 18th day of June, 2018.

Respectfully submitted

/s/ Raheela Ahmed

Raheela Ahmed

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Assistant CCRC

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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 INITIAL BRIEF

APPENDIX D

August 5, 2019 Motion for Determination of Competency Pursuant to Florida Rule
of Criminal Procedure 3.851

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**CASE NO: CRC10-03759CFANO
POST-CONVICTION CAPITAL CASE**

CRAIG ALAN WALL, SR.,

Defendant.

**DEFENDANT'S MOTION FOR DETERMINATION OF COMPETENCY PURSUANT
TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.851**

COMES NOW, Craig Alan Wall, Sr., by and through undersigned counsel, and respectfully moves this Court to appoint two experts pursuant to Fla. R. Crim. P. 3.851, sections (g) and (i), to evaluate Mr. Wall to determine if he is competent to proceed. As grounds in support, counsel states:

1. Capital Collateral Regional Counsel ("CCRC") was appointed to represent Mr. Wall in his collateral post-conviction proceedings on March 15, 2018.
2. Undersigned counsel began working on Mr. Wall's case in June of 2018. From June of 2018 to approximately February of 2019, undersigned counsel visited Mr. Wall numerous times and had regular communication with him through letters and phone calls. Regular contact with Mr. Wall ceased in approximately February of 2019 when Mr. Wall began refusing mail from both undersigned counsel and CCRC.

3. Mr. Wall filed a “Motion to Monitor and Remove Counsel Pursuant to § 27.711(12) Findings and if Denied 3.851(i) Motion to Dismiss All Counsel and Post-Conviction Proceedings” on July 16, 2019. CCRC received the motion on July 23, 2019.
4. A status hearing was subsequently held in Mr. Wall’s case on August 2, 2019. At the hearing, counsel requested that Mr. Wall be evaluated for competency by two experts prior to any hearing on Mr. Wall’s pro se motion, as counsel had grave concerns about Wall’s competency. This Court denied a preliminary evaluation before the hearing, but stated an evaluation could be ordered if Wall’s competency became a concern at the hearing. The hearing on Mr. Wall’s pro se motion is scheduled for August 23, 2019. Undersigned counsel respectfully requests that this Court reconsider its denial of a competency evaluation prior to the hearing.
5. Based on previous, extensive contact with Mr. Wall, and the preliminary opinion of a mental health expert, counsel has a good faith basis to believe that Mr. Wall is currently incompetent to proceed and will therefore be incompetent at the hearing on his motion to waive his post-conviction proceedings.
6. To the extent that counsel is permitted to state with specificity the facts that cause counsel to believe Mr. Wall is incompetent without waiving attorney-client privilege, counsel believes there are material manifestations of Mr. Wall’s behavior and communications that indicate a major mental illness rendering Mr. Wall incompetent. A mental health expert has also evaluated records and information in Mr. Wall’s case and offered her preliminary opinion that Mr. Wall suffers from a major mental illness rendering him incompetent.

7. Mr. Wall often exhibits a pro-longed fixation on highly-specific ideas that are unrelated to seeking relief from his conviction and sentence. For example, Mr. Wall has consistently requested counsel perform tasks unrelated to any cognizable claim for post-conviction relief instead of attempting to discuss or pursue relevant issues in his case. Mr. Wall has also exhibited an inability to establish and maintain appropriate behavior during client visits and in the courtroom. Mr. Wall has consistently been aggressive and disruptive when counsel visited him at Florida State Prison. Further, the record on appeal of Mr. Wall's previous proceedings in this case shows multiple examples of him using profanity and explicit language, making threats of physical violence, and having to be removed from the courtroom due to disruptive behavior.
8. Mr. Wall is incapable of understanding the purpose of his post-conviction proceedings, and is incapable of consulting with counsel to assist in investigating and preparing his case because he cannot distinguish relevant from non-relevant issues despite counsel's multiple attempts to explain the purpose of his current proceedings. Counsel is gravely concerned that Mr. Wall will not be competent during the hearing on his pro se motion to waive his collateral counsel and proceedings because his mental illness prevents him from understanding the consequences of that decision. *See Trease v. State*, 41 So. 3d 119, 125 (Fla. 2010) (explaining that the relevant test for a capital defendant's competency to waive collateral counsel and proceedings is whether the defendant has the capacity to understand the consequences of the waiver).

WHEREFORE, undersigned counsel moves this Court to enter an order appointing two experts to evaluate Craig Alan Wall, Sr. to determine his competency to proceed.

Respectfully submitted,

/s/ Adrienne Joy Shepherd

Adrienne Joy Shepherd

Florida Bar Number 1000532

Assistant CCRC

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The Law Office of the Capital Collateral

Regional Counsel - Middle Region

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CERTIFICATE OF GOOD FAITH

The undersigned counsel certifies that she is counsel of record in this cause and that the motion for competency determination is made in good faith and on reasonable grounds to believe that Craig Alan Wall, Sr. is incompetent to proceed.

/s/ Adrienne Joy Shepherd
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the PDF document of the foregoing has been transmitted to this Court through the Florida Courts E-Filing Portal on this 5th day of August, 2019.

I HEREBY FURTHER CERTIFY that a copy of the PDF document of the foregoing has been served via the Florida Courts E-Filing Portal to the Judicial Assistant of **Honorable Philip J. Federico**, Circuit Court Judge, Sixth Judicial Circuit, 14250 49th Street North, Clearwater, Florida 33762, at plee@jud6.org; to **Marilyn Muir Beccue**, Assistant Attorney General, Office of the Attorney General, at marilyn.beccue@myfloridalegal.com and capapp@myfloridalegal.com, and to **Sara Elizabeth Macks**, Assistant State Attorney, Office of the State Attorney for the Sixth Judicial Circuit, at sa6appealservice@co.pinellas.fl.us and smacks@co.pinellas.fl.us, on this 5th day of August, 2019.

I HEREBY FURTHER CERTIFY that a copy of the foregoing has been sent via U.S. mail to the **Honorable Philip J. Federico**, Circuit Court Judge of the Sixth Judicial Circuit, at his listed address: Chamber 13, 14250 49th Street North, Clearwater, FL 33762; and **Mr. Craig Wall, Sr.**, DOC# 140726, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 on this 5th day of August, 2019.

/s/ Adrienne Joy Shepherd
Adrienne Joy Shepherd
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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 INITIAL BRIEF

APPENDIX E

August 14, 2019 Order Denying Defendant's Motion for Determination of
Competency

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION**

STATE OF FLORIDA,

CASE NO.: CRC10-03759CFANO

v.

UCN: 522010CF003759XXXXNO

DIVISION: M

CRAIG ALAN WALL, SR.

Person ID: 1474146, Defendant. /

**ORDER DENYING DEFENDANT'S
MOTION FOR DETERMINATION OF COMPETENCY
(TREATED AS A MOTION FOR RECONSIDERATION)**

THIS CAUSE came before the Court upon Capital Collateral Regional Counsel's (CCRC) "Motion for Determination of Competency Pursuant to Florida Rule of Criminal Procedure 3.851," filed on August 5, 2019. After reviewing the motion, the record, and applicable law, this Court finds as follows:

On July 22, 2019, Defendant filed a *pro se* "Motion to Monitor and Remove Counsel Pursuant to § 27.711(12) Findings and if Denied 3.851(i) Motion to Dismiss All Counsel and Post-Conviction Proceedings." On August 2, 2019, a status check was held in the instant case pursuant to Rule 3.851(c)(2). At the status check, CCRC requested that Defendant be evaluated by two experts prior to any hearing on Defendant's *pro se* motion due to concerns about Defendant's competency. This Court denied the request, and a hearing on Defendant's *pro se* motion was scheduled for August 23, 2019.

In the instant motion, CCRC requests that the Court reconsider its denial of a competency evaluation prior to the August 23, 2019 hearing on Defendant's motion. CCRC alleges that, based on its contact with Defendant and the preliminary opinion of a mental health expert, it has a good faith basis to believe that Defendant is currently incompetent to proceed, and will therefore be incompetent at the hearing on his *pro se* motion. After considering CCRC's motion, this Court will not reconsider its prior ruling. Therefore, the instant motion is denied without prejudice to CCRC requesting a competency evaluation at the hearing.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's "Motion for Determination of Competency Pursuant to Florida Rule of Criminal Procedure 3.851" is hereby **DENIED** without prejudice.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this ____ day of August, 2019. A true and correct copy of the foregoing has been furnished to the parties indicated below.

Philip J. Federico, Circuit Judge

Original Signed

AUG 14 2019

PHILIP J. FEDERICO
Circuit Judge

Copies Furnished to:

The Honorable Ken Burke,
Clerk of Circuit Court of the Sixth Judicial Circuit in and for Pinellas County,
Attn: Criminal Assistant Manager
14250 49th Street North
Clearwater, Florida 33762

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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 INITIAL BRIEF

APPENDIX F

September 26, 2019 Motion to Vacate Judgments of Conviction and Sentences of
Death Pursuant to Florida Rule of Criminal Procedure 3.851

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**CASE NO: CRC10-03759CFANO
SUPREME COURT NO: SC16-1221
POST-CONVICTION CAPITAL CASE**

CRAIG ALAN WALL, SR.,

Defendant.

**DEFENDANT'S MOTION TO VACATE JUDGMENTS OF CONVICTION AND
SENTENCES OF DEATH PURSUANT TO FLORIDA RULE OF CRIMINAL
PROCEDURE 3.851**

ADRIENNE JOY SHEPHERD
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ALI SHAKOOR
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LAW OFFICE OF THE CAPITAL COLLATERAL
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Craig Alan Wall, Sr. (“Wall”), defendant in the above-captioned case, by and through undersigned counsel, and pursuant to Fla. R. Crim. P. 3.851 and the Constitutions of the United States and the State of Florida, respectfully moves this Honorable Court to vacate and set aside the judgments of conviction and sentences for two counts of first-degree murder in this case. In support of this motion, Wall respectfully submits the following:

PRELIMINARY STATEMENT

Wall is currently incarcerated at Union Correctional Institution, 25636 NE SR-16, Raiford, Florida 32083, under a sentence of death. The record on appeal will be cited as R/[page number]. All other references are self-explanatory or otherwise explained. All emphasis is supplied unless otherwise noted.

Capital Collateral Regional Counsel (“CCRC”) was appointed to represent Wall in his capital collateral post-conviction proceedings on March 15, 2018. On July 16, 2019, Wall filed a pro se “Motion to Monitor and Remove Counsel Pursuant to § 27.711(12) Findings and if Denied 3.851(i) Motion to Dismiss All Counsel and Post-Conviction Proceedings.” A hearing was held on the motion on August 23, 2019. At the hearing, Wall orally waived his post-conviction collateral proceedings and CCRC’s representation in those proceedings. The Court granted Wall’s waiver and discharged CCRC in an order rendered September 18, 2019. CCRC is required to file an appeal of Wall’s waiver to the Florida Supreme Court (“FSC”). Fla. R. Crim. P. 3.851(i)(8). CCRC understands that the September 18, 2019 order discharges CCRC from representing Wall, with the exception of filing the automatic appeal under Rule 3.851(i)(8). However, CCRC files this motion in an abundance of caution, and to preserve Wall’s right to challenge his capital convictions and sentences in both state and federal collateral proceedings in the future. The deadline for Wall to file both a Rule 3.851 motion and federal petition under 28 U.S.C § 2254 for writ of habeas corpus

challenging his capital convictions and sentences is October 9, 2019. CCRC files this motion to ensure that deadline is properly met. CCRC requests that the Court reserve ruling on this motion, pending the FSC's disposition of the appeal of Wall's waiver of collateral post-conviction proceedings. CCRC also requests that the Court grant CCRC leave to amend this motion to include claims requiring consultation with Wall in the event that the FSC overturns Wall's waiver and Wall is also restored to competency.

PROCEDURAL HISTORY

Trial Proceedings

On direct appeal, the FSC described the procedural history of Wall's case as "long" and "convoluted." *Wall v. State*, 238 So. 3d 127, 133 (Fla. 2018). This motion will set forth the history of the proceedings deemed relevant to Wall's potential collateral post-conviction claims and does not present an exhaustive explanation of the procedural history reflected in the record on appeal.

On February 25, 2010, Wall was indicted by grand jury for two counts of capital murder for the deaths of his five-week old infant son, Craig Wall, Jr. ("C.J.") and the infant's mother, Laura Taft ("Taft."). R/110. The FSC summarized the alleged circumstances of C.J.'s and Taft's deaths as follows:

C.J.'s Death

Taft gave birth to C.J. on December 30, 2009. Wall, Taft, and C.J. all lived together, along with Taft's six-year-old son from a prior relationship, Connor, who lived with them part time. At around 7:30 a.m. on February 5, 2010, Taft left for work. About three hours later, Wall called 911 and reported that C.J. was not breathing. Paramedics arrived at around 10:45 a.m., and found that C.J. was not breathing, he was unresponsive, and cyanotic. C.J. was taken to the hospital, where doctors found bleeding in his eyes and brain, and also rib fractures. Doctors suspected that the injuries were caused by child abuse, so they reported the case to law enforcement who interviewed Wall. Detectives with the Clearwater Police Department questioned Wall about the events preceding C.J.'s death.

He indicated that Taft left their home around 7:30 a.m., and he was alone with C.J.

between her departure and the paramedics' arrival. Wall claimed that when he awoke at about 10 a.m., C.J. was propped up on a pillow beside him in bed. He said that C.J. was wet and making noise like he was hungry. Then, Wall contended that he gave C.J. a bottle and left him on the couch in the living room, while he made himself breakfast. At that point, C.J. did not appear to be in crisis.

Wall told investigators that he heard C.J. cough and went back into the living room to find C.J. limp with his eyes “slitted like he was sleeping, but he wasn't.” Wall started to change C.J.'s diaper and took him to the bathtub. According to Wall, C.J. was limp that entire time. Then, Wall ran cold water over C.J. to get him to respond. At one point, Wall blew into C.J.'s mouth and mucus came out of his nose. When Wall removed C.J. from the bathtub, he could hear his heart beating, but he did not detect breathing. Wall then placed C.J. on a bed and dried him off with a towel and a hair dryer set to low. Next, Wall brought C.J. back into the living room and attempted to squeeze his ribs because he did not know how to do CPR. Eventually, Wall placed C.J. on the floor and called 911.

During the interview, Wall was confronted with the fact that C.J. suffered a brain injury. Upon further questioning, Wall brought up the term “shaken baby syndrome.” At various points, Wall vacillated between accepting blame for C.J.'s injuries and claiming not to know how they occurred. In fact, Wall stated, “I fu--- killed my son.”¹ Wall repeatedly stated that Taft was a good mother who had not harmed C.J.

After being confronted with C.J.'s brain injury, Wall discussed a near car accident. On February 3, 2010, two days before C.J. became unresponsive, Taft was nearly involved in a car accident with C.J. in the backseat, but she was able to stop her vehicle in time. Following that incident, Taft stopped the vehicle and checked on C.J., who appeared fine. Initially, Wall acknowledged that he did not think that the near accident could have caused C.J.'s injuries, but later in the interview he began suggesting that such event was the cause. The same day as the near accident, C.J. was circumcised. Doctors told Wall not to feed C.J. for fifteen minutes after the procedure, but Wall fed him a bottle in his truck anyway. Following that, C.J. “threw up massively” in the truck. The next day, February 4—one day prior to C.J. becoming unresponsive—Wall noted that C.J. had a temperature of ninety-three degrees and that he regurgitated in his bouncy chair.

On February 5, after C.J. was taken to the hospital, Dr. Sally Smith examined him. C.J. had a hemorrhage on his brain, his pupils were dilated and unreactive, and he had retinal hemorrhages. This combination of injuries led Dr. Smith to suspect that someone physically abused C.J. Specifically, the injuries suggested “abusive head trauma,” which is the result of “high-force acceleration/deceleration rotational trauma to the brain, often ... by violent shaking, but [it] can be also caused in the course of the child being swung around.” C.J.'s brain was so swollen that it protruded through an opening in the dura matter, which is a thick membrane covering the surface of the brain. An autopsy later determined that the cause of

death was blunt-force trauma.

According to Dr. Smith, this type of brain injury would not be caused by a vehicle stopping when it never impacted another object. She continued, “Even with an impact, extensive bilateral retinal hemorrhages are exceedingly rare in any kind of car crash, let alone one that doesn't involve an impact.” Dr. Smith concluded that an infant with C.J.'s injuries would not have been able to survive for twenty-four hours without medical attention if those injuries were caused by a car accident. In fact, Dr. Smith testified to a time frame for these injuries:

In cases like this where the baby died of these injuries, the progression to that sort of critically ill condition and impending death would occur probably within minutes of the original trauma. It might be an hour or two, but it would be quickly following injury to the brain.

An infant with C.J.'s injuries would not have been able to drink a bottle, and would only be able to make certain noises such as grunting or gasping for air. Thus Dr. Smith testified that it would be “highly unlikely” for a child to still be alive at 10:45 a.m. having received C.J.'s injuries prior to 7:30 a.m.

Dr. Thogmartin, Wall's witness, opined that any brain injury from the birthing process could be completely ruled out as the cause of death. Further, Dr. Thogmartin testified that while rebleeding may occur in old brain injuries, an injury would not rebleed to the extent of a chronic subdural hematoma. In Dr. Thogmartin's opinion, C.J. suffered a brain injury about one week prior to his death, but was reinjured “right around the time of death.” Also, Dr. Smith noted C.J.'s rib fractures. These fractures were posterior fractures, adjacent to the spinal column, which “are highly specific for child abuse as the cause.” Because infant ribs are somewhat flexible, posterior rib fractures are not caused by CPR. Instead, posterior rib fractures in infants are caused by “high force compression or distortion-type forces applied to the ribs where they end up breaking across the adjacent spinal.” Dr. Thogmartin testified that these fractures were not from CPR; rather, this was a “squeeze the life out of the rabbit squeeze” most likely from an “extreme inflicted injury.”

On February 6, 2010, C.J. died.

Interim Time Between C.J.'s and Taft's Deaths

Later in the day on February 6, Wall ingested sleeping pills to attempt suicide. He made an emotional suicide video where he denied harming C.J. Taft called law enforcement, after which Wall was involuntarily committed to state custody on mental health grounds and taken to Morton Plant Hospital.

On February 8, 2010, Taft filed a petition for temporary injunction against Wall,

citing domestic violence as the basis for the injunction. The injunction was granted, and it was served on Wall on February 9, 2010, while he was still in the hospital. The next day, Wall was released. He sought emergency hearings on the injunction to allow him to attend C.J.'s funeral; however, the court was unable to schedule a hearing on such short notice. So, on February 14, 2010, Wall violated the injunction and attended C.J.'s funeral, where he was arrested for the violation.

While being transported to jail, Wall spoke with a fellow arrestee, Danny Welker. According to Welker, Wall told him that Taft “was lying, lying about him and that he was going to choke the life out of her when he got out of jail.” When Welker suggested that Wall was exaggerating, Wall informed him that he was not. Wall was released from custody on February 15, 2010. By then, Taft had already moved out of their shared apartment to a different residence.

Taft's Death

At about 3 a.m. on February 17, 2010, Taft's upstairs neighbor, Christopher Thompson, returned home from working the late shift. Thompson noticed a person sitting in a red vehicle. That person, a male, exited his vehicle, walked away, and then returned. Thompson continued into his apartment, and, upon lying down for bed, he heard glass shatter directly below his residence. “Within less than 10 or 15 seconds” of the glass breaking, Thompson heard the “fearful” and “distressed yelling” of a female. According to Thompson, the yelling continued for thirty to forty-five seconds. Thompson attempted to call 911 and knocked on his roommates' door to wake them up. Then he exited his front door and saw the same male he had seen earlier walking toward the same red vehicle from the apartment below. The man looked back over his shoulder and Thompson saw him face-to-face. However, the man did not stop; instead, he got into his vehicle and drove off.

Downstairs, Thompson found Taft in a seated position leaning against a wall beside the doorway. Thompson tried to speak to Taft, but he could only hear “gurgling noises from her throat.” Despite his efforts, Thompson could not tell if Taft had a pulse. By that point, Thompson's roommate was already on the phone with 911. The police arrived and took Thompson to the police station to identify the man that he saw leaving the scene. There Thompson identified Wall.

The trial court found that Wall, armed with an “assault style” knife, broke Taft's rear sliding glass door. Then, Wall confronted Taft, and he violently attacked her. The final blow, which was delivered to her left shoulder, was delivered with enough force that the knife blade separated from the handle and remained lodged inside her. The fatal wound was a stab to her torso that entered her heart. Moreover, Taft evidenced multiple defensive wounds.

Wall v. State, 238 So. 3d 127, 130–33 (Fla. 2018).

The Sixth District Pinellas County Public Defender’s Office represented Wall when his

case began. On May 27th, 2010, the Public Defender's Office withdrew and was replaced by Attorney William Bennett. ("Bennett"). R/141. Bennett filed his notice of appearance on June 2, 2010. R/142. On August 12, 2010, Attorney Bjorn Brunvand ("Brunvand") was appointed as co-counsel. R/156. The record reflects that Wall made multiple *Nelson*¹ requests to remove his various trial attorneys throughout his proceedings. The Court held multiple hearings on these requests, found them un-founded, and denied them.²

On November 30, 2011, Bennett filed a "Motion to Sever Defendants And/Or Charges." R/289-90. No hearing on the motion is apparent from the record on appeal. Bennett withdrew from the case on May 7, 2012, and Attorney Daniel Hernandez ("Hernandez") was appointed as substitute counsel. R/378-79. On February 4, 2013, Brunvand filed a second "Motion to Sever Counts One and Two." R/404-15. The motion to sever was denied at a February 22, 2013 hearing. R/434; 515-25. At a May 1, 2013 hearing, Wall requested that Brunvand be removed from his

¹ *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973).

² On June 1, 2011, Wall wrote a pro se letter to the Court stating that he wanted to fire Bennett from his defense team. R/205-09. The Court held a *Nelson* hearing and denied the request on June 24, 2011. R/214-32. On May 1, 2012, the Court held a second *Nelson* hearing after Wall again requested to remove Bennett from his case. R/362-66. Bennett withdrew from the case on May 7, 2012. At a May 1, 2013 hearing, Wall requested that Brunvand be removed from his case. R/622-29. The Court did not grant a *Nelson* hearing on that request. R/632. On July 18, 2013, the Court held a third *Nelson* hearing after Wall again requested that Brunvand be removed from his case. R/708-67. The Court denied the *Nelson* request. R/757. On July 19, 2013 and August 29, 2013, Wall filed two pro se motions to dismiss counsel, requesting that both Brunvand and Hernandez be removed from his case. R/768-77; 840-50. The request was denied after the Court held a fourth *Nelson* hearing on August 29, 2013. R/804-39. On December 13, 2013, the Court held a fifth *Nelson* hearing after Wall renewed his motion to dismiss counsel. R/889-966. After a lengthy hearing, the Court reset the motion to dismiss counsel to December 20, 2013. R/956. The Court conducted and denied a sixth *Nelson* hearing on December 20, 2013. R/1120-52. Wall filed another motion to dismiss Brunvand and Hernandez at a February 7, 2014 hearing. R/1208-26. The Court held a seventh *Nelson* hearing on the motion at the February 7, 2014 hearing, and denied the request. R/1252-78. On November 24, 2014, the Court held an eighth *Nelson* hearing at Wall's request. R/6746-6817. The *Nelson* request was denied. R/6816-17.

case. R/622-29. The Court did not grant a *Nelson* hearing, and instead appointed Dr. Jill Poorman (“Dr. Poorman”) to evaluate Wall’s competency to potentially proceed pro se. Dr. Poorman found that Wall was not competent to represent himself in a May 10, 2013 report. Dr. Poorman later explained that she found Wall incompetent to represent himself due to his behavioral issues, hunger strikes, and uncooperative attitude towards her when she tried to see him. R/1123.

At a December 13, 2013 hearing, the Court again appointed Dr. Poorman to evaluate Wall’s competency to proceed pro se. R/950-54. Dr. Poorman opined at a December 20, 2013 hearing that Wall was now competent to proceed pro se under *Indiana v. Edwards*³. R/1122-27. The Court then conducted a *Faretta*⁴ inquiry, but determined that Wall would not proceed pro se because he refused to have Brunvand and Hernandez as standby counsel. R/1153-58; 1162-66; 1183-84. After another *Faretta* inquiry at a February 7, 2014 hearing, the Court allowed Wall to represent himself with Brunvand and Hernandez as standby counsel. R/1252; 1278-1311. Wall requested a continuance on his April 7, 2014 trial date, but the Court denied the request. R/1481-82. Wall relinquished his pro se status the morning of his April 7, 2014 trial, and trial counsel was granted a continuance. R/6640-59.

On December 9, 2014, attorney Ronald Kurpiers (“Kurpiers”) filed a notice of appearance as co-counsel with Brunvand and Hernandez. R/1719. On February 13, 2015, Wall entered a plea of no contest to the charge for C.J.’s death and guilty to the charge for Taft’s death. R/1927-29. As part of a unique proposed plea agreement, Wall agreed with the State that the death penalty would be an appropriate sentence. R/1927-29. Dr. Poorman opined at the February 13, 2015 plea hearing that Wall was still competent to proceed and to self-represent based on her recent

³ *Indiana v. Edwards*, 554 U.S. 164 (2008).

⁴ *Faretta v. California*, 422 U.S. 806 (1975).

evaluation of him on February 10, 2015. R/1934-39. The Court conducted a *Faretta* inquiry, and determined that Wall could conduct his penalty phase pro se with Brunvand and Kurpiers as standby counsel.⁵ R/1965-82. Wall waived a penalty phase jury, and presented minimal mitigation during his pro se penalty phase trial on February 23, 2015 and February 24, 2015.⁶

Over Wall's objection, the trial court appointed attorneys Jenna Finkelstein and Amanda Sellers as independent special counsel to investigate and present additional mitigation at the *Spencer*⁷ hearing held on April 14, 2016 and April 15, 2016.⁸ R/3293. Wall appeared pro se at the *Spencer* hearing with Brunvand and Kupiers as standby counsel. While returning to the courtroom after a lunch-break on the first day of the hearing, Wall stated on the record that "I hope I don't get a hold of a knife. Fuck boy slammed me in my face in the wall and all that shit when I went in there." R/4897. A "Deputy Miller" then apprised the Court that Wall had just previously refused to walk, had to be carried by several deputies into his holding cell, and had made threats while outside the courtroom. R/4899-4900. The Court then rescinded Wall's pro se status, removed Wall from the courtroom, and reappointed Brunvand and Kurpiers to represent Wall. R/4904-06. Before removing Wall, the Court stated:

You've insulted the lawyers. You've insulted the witnesses. You made threats to people just as you did when you walked into the courtroom now when you looked at me and said, "You better hope I never get my hands on a knife." ... I'm not going to endanger security personnel in the back room because you think it's – you enjoy threatening people or saying the things that you've said in regard to this.

R/4902-03. On the second day of the hearing, the Court allowed Wall to return to the courtroom and resume his pro se status. R/5015-23. On June 3, 2016, the Court entered a judgment imposing

⁵ The record does not reflect that Hernandez participated as standby counsel during the penalty phase, and he formally withdrew from the case on March 16, 2015. R/3313.

⁶ Wall's penalty phase trial is reported in eight volumes and can be found at R/2096-3290.

⁷ *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

⁸ Wall's *Spencer* hearing is reported in four volumes and can be found at R/4790-5381.

a death sentence for both counts of first degree murder. R/5505-08. This is the judgment and the sentences under attack pursuant to Fla. R. Crim. P. 3.851(e)(1)(A). *See* Attachment A.

Appellate Proceedings

Wall's appellate counsel raised two grounds on direct appeal: "(1) whether the trial court erred in failing to order a competency evaluation prior to accepting the plea; [and] (2) whether the trial court erred by failing to recuse itself upon a motion to disqualify." *Id.* at 140. Wall also filed a pro se supplemental appellate brief, raising, in part, the Court's denial of his motion to sever. The FSC independently considered the voluntariness of Wall's plea and the proportionality of his death sentences. *Id.* at 144-45. The FSC found that all appellate claims were meritless, Wall's plea was voluntary, and his death sentences were proportionate. *Id.* at 140-45. The FSC affirmed Wall's convictions and death-sentences. *Id.* at 146. The United States Supreme Court denied Wall's petition for a writ of certiorari on October 9, 2018.

TIMELINESS OF THIS MOTION

Wall's judgment and sentence became final on October 9, 2018, upon the denial of his petition for a writ of certiorari with the United States Supreme Court. A motion for post-conviction relief is timely if filed within one year of the date the judgment becomes final. *See* Fla. R. Crim. P. 3.851(d)(1). Therefore, this motion is timely if filed by October 9, 2019. Wall reserves the right to amend this document for good cause pursuant to Fla. R. Crim. P. 3.851(f)(4).

STATE AND FEDERAL CLAIMS

All claims for relief raised in this motion are asserted as claims for relief under both the State and Federal Constitutions.

PLEADING REQUIREMENTS

Fla. R. Crim. P. 3.851(e)(1) requires that any motion to vacate the judgment of conviction

and sentence of death contain either a detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought, or a detailed allegation as to the factual basis for any purely legal or constitutional claim for which an evidentiary hearing is not required and the reason that the claim could not have been raised on direct appeal.⁹ Fla. R. Crim. P. 3.851(e)(1)(D), (E). Aside from requiring a copy of the judgment and sentence, the Rule is permissive with regard to attachments. *See* Fla. R. Crim. P. 3.851(e)(1).

SUMMARY OF APPLICABLE LAW

Wall raises claims of ineffective assistance of counsel. The general case law for those claims will be addressed here. More specific citations will be utilized under each claim.

The United States Supreme Court has held that counsel “has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.” *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Specifically, counsel has a duty to investigate in order to make the adversarial testing process work in the particular case. *See id.* at 690. The *Strickland* two-prong analysis to show ineffective assistance of counsel is as follows:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. at 687. To establish deficient performance, a petitioner must demonstrate “that counsel’s

⁹ As to those claims which could have been but were not raised on direct appeal due to alleged ineffective assistance of appellate counsel, Florida procedural law requires that claims of ineffective assistance of appellate counsel be raised in a petition for writ of habeas corpus filed simultaneously with the initial brief on appeal of the denial of this motion, if it is denied. A review of the trial court record in this case with the initial brief on direct appeal shows that there were motions and objections that were made by trial counsel but were not pursued on appeal. Such claims are cognizable in a petition for writ of habeas corpus.

representation fell below an objective standard of reasonableness.” *Id.* at 688. In order to show prejudice, it is not necessary to establish “that counsel’s deficient conduct more likely than not altered the outcome in the case.” *Id.* at 693. Instead, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. When determining prejudice, “a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury.” *Id.* at 695.

REQUEST FOR EVIDENTIARY HEARING

The Commentary to Fla. R. Crim. P. 3.851 states that the Rule’s 2001 amendment “requires an evidentiary hearing on claims listed in an initial motion [for capital collateral relief] as requiring a factual determination.” Further, claims of ineffective assistance of counsel routinely require a post-conviction evidentiary hearing. Wall requests an evidentiary hearing on Claims 1 and 2. A witness list and exhibit list will be provided at the Case Management Conference in accordance with Fla. R. Crim. P. 3.851(f)(5)(A).

CLAIM 1

WALL WAS DENIED HIS SUBSTANTIVE DUE PROCESS RIGHTS UNDER THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION BECAUSE HE WAS CONVICTED AND SENTENCED WHILE MENTALLY INCOMPETENT.

The record on appeal, Wall’s history of severe mental illness as evidenced through his mental health records, and a mental health expert’s preliminary opinion after reviewing those records all present clear and convincing evidence that raises substantial doubt that Wall was competent to proceed when he entered his pleas and then proceeded pro se during his penalty phase

and *Spencer* hearing. Wall should be granted a hearing on his substantive incompetency claim, and his convictions and sentences should be subsequently vacated because he was incompetent to proceed.

As an initial matter, Wall recognizes the FSC's current case law stating that a claim of substantive incompetency should be raised on direct appeal and is procedurally barred when raised in a post-conviction motion. *See Nelson v. State*, 43 So. 3d 20, 33 (Fla. 2010); *Carroll v. State*, 815 So. 2d 601, 610 (Fla. 2002). However, Wall argues that the Court should still consider his substantive incompetency claim because he has a due process right not to be proceeded against while incompetent, and he should be able to raise a claim concerning that right at any time. The Eleventh Circuit Court of Appeals recognized that competency is fundamental to the right to due process when it carved out a procedural exception for substantive incompetency claims on federal habeas review, holding that the "*Sykes*¹⁰ procedural default rule does not ... preclude review on the merits of a postconviction incompetency claim, even if that claim is not raised on direct appeal." *Medina v. Singletary*, 59 F.3d 1095, 1107 (11th Cir. 1995) (internal citations omitted). The Eleventh Circuit has further found that a substantive incompetency claim was not procedurally barred on federal habeas review even when the FSC found the claim was barred in state post-conviction proceedings because it was not raised on direct appeal. *See Johnston v. Singletary*, 162 F.3d 630, 637 (11th Cir. 1998). The Court should follow the Eleventh Circuit's guidance and consider Wall's post-conviction substantive incompetency claim.

The Due Process Clause of the Fourteenth Amendment prohibits the states from trying and convicting a mentally incompetent defendant. *James v. Singletary*, 957 F.2d 1562, 1569 (11th Cir. 1992). A petitioner raising a substantive claim of incompetency need not show error by any state

¹⁰ *Wainwright v. Sykes*, 433 U.S. 72 (1977).

actor. *James*, 957 F.2d at 1572. The trial of an incompetent defendant is per se prejudicial. *Id.* at 1571. When determining competency, the “test must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960). A petitioner is entitled to a hearing on his substantive incompetency claim upon a presentation of “clear and convincing evidence [raising] a substantial doubt” as to his competency to stand trial. *James*, 957 F.2d at 1572. Wall was clearly incompetent during his proceedings because he suffers from a severe mental illness that rendered him incapable of reasonably consulting with his lawyers to assist in his own defense and prevented him from having a rational understanding of the proceedings against him. Wall should be granted an evidentiary hearing on his competency claims, and his convictions and sentences should be subsequently vacated because he was tried and convicted while incompetent. *James*, 957 F.2d at 1575.

Relevant factors to consider when determining competency are whether the defendant can “disclose to counsel facts pertinent to the proceedings at issue ... [and] ... manifest appropriate courtroom behavior.” Fla. R. Crim. P. 3.211(a)(2). A mental health expert hired by CCRC has conducted a preliminary review of Wall’s available mental health records and the record of his proceedings and opined that he exhibits severe mental illness rendering him incompetent. The record reflects that Wall’s severe mental illness prevented him from assisting in his own defense because it rendered him incapable of discussing relevant facts with counsel and manifesting appropriate courtroom behavior.

Wall was incapable of assisting in his own defense because his severe mental illness prevented him from discussing relevant facts with his attorneys. Wall hindered counsel’s

investigation in his case, and any relevant discussion concerning the facts for that investigation, by constantly making *Nelson* requests because his attorneys failed to allow him to control every aspect of his defense.¹¹ For example, Wall filed several pleadings complaining that his attorneys did not consult with him before every deposition they took in his case. *See* R/700-02; 768-76; 840-49. Wall even attempted to cancel the depositions of Dr. Noel Palma (“Dr. Palma”) and Dr. Sally Smith (“Dr. Smith”), two of the most important State experts concerning C.J.’s death, because his attorneys did not consult with him before scheduling the depositions. *See* R/700-02. Wall’s action clearly indicates he was unable to assist in his own defense. Despite the fact that he consistently professed his innocence of C.J.’s death, Wall attempted to prevent counsel from gathering relevant evidence from Dr. Smith, who testified that C.J.’s symptoms indicated “abusive head trauma,” and Dr. Palma, the medical examiner who found that C.J.’s cause and manner of death was “homicide” by “blunt trauma.” *See* R/2545-46; 5831.

Wall was further incapable of manifesting appropriate courtroom behavior. Despite the Court continuously warning Wall to act appropriately, the record reflects multiple instances of Wall interrupting the proceedings, using profanity, and being removed from the courtroom for his disruptive behavior. At an April 12, 2013 hearing on a defense motion to transport, the Court allowed Wall to address issues un-related to the defense motion. While discussing the denial of his motion to sever, Wall stated:

I do not appreciate this Court playing games regarding my appealing your failure to properly sever my cases. For this Court to advise me I can file an interlocutory, i.e., a certiorari by another name, your Honor was being, for lack of a more legal term, a dick.

¹¹ The record reflects that the Court conducted at least eight *Nelson* hearings at Wall’s request. *See supra* n. 2.

R/607-08. At a May 1, 2013 pre-trial hearing, Wall interrupted the Court and counsel's discussion concerning a subpoena duces tecum to demand that Brunvand be removed from his case for allegedly protecting someone who violated Wall's HIPPA and attorney-client privilege rights. R/626-30. While discussing the issue, Wall continued to interrupt the Court to the point that he was removed from the courtroom. R/634-36. At a December 20, 2013 hearing, Wall threatened to kill Colleen-Quinn Adams, a previous mitigation-specialist on his case. When the Court asked Wall if he would cooperate with another mitigation-specialist, Dr. Brooke Butler, Wall stated:

Well, you'd be better off with Ms. Butler. Because if you put Ms. Adams on, I can't verify that she'll live. Straight up. That bitch is – no. I can't even verify that she'll breathe another day, including Mr. Brunvand. Establish that. I might as well just go ahead and go all in. You can shackle me and fuckin' cuff me up until the day is long. We'll come here every day looking like fuckin' Hannibal Lecter. I don't give a fuck.

R/1167-68. The Court then removed Wall from the courtroom. R/1168. As discussed further below, the Court also had to remove Wall for a portion of his *Spencer* hearing after he made threats concerning a knife. *See infra* pp. 24.

Wall's history of severe mental illness evidenced in his mental health records, his inability to discuss relevant facts with his attorneys evidenced by his attempts to thwart their investigation into the relevant issues of his case, and his inability to manifest appropriate courtroom behavior as reflected on the record all present clear and convincing evidence that raises substantial doubt that Wall was competent to proceed when he entered his pleas and then proceeded pro se during his penalty phase and *Spencer* hearing. *James*, 957 F.2d at 1572. Wall need not show error by any state actor to raise his substantial incompetency claim. *Id.* The fact that he was convicted and sentenced while incompetent is per se prejudicial. *Id.* at 1571.

As to Claim 1, Wall requests an evidentiary hearing to present the testimony of mental health experts to establish that Wall was rendered incompetent due to severe mental illness during his proceedings. Further, an evidentiary hearing is necessary to introduce copies of mental health records documenting Wall's severe mental illness. Wall further requests that this Court vacate his convictions and sentences of death, as he was incompetent when those convictions and sentences were rendered.

CLAIM 2

TRIAL COUNSEL PROVIDED PREJUDICIAL INEFFECTIVE ASSISTANCE FOR FAILING TO RAISE THE ISSUE OF WALL'S COMPETENCY TO PROCEED AND COMPETENCY TO PROCEED PRO SE

The argument that counsel was ineffective for failing to adequately raise a defendant's competency is cognizable in a post-conviction motion. *See Demarco v. State*, 31 So. 3d 975, 976 (Fla. 2d DCA 2010). To establish deficiency under *Strickland* for failing to raise the issue of competency, a defendant must allege specific facts showing that a reasonably competent attorney would have questioned competence to proceed. *See Perez v. State*, No. 2D17-4670, 2018 WL 4517219, (Fla. 2d DCA Sept. 21, 2018); *see also Thompson v. State*, 88 So. 3d 312, 316 (Fla. 4th DCA 2012). To establish prejudice, the defendant must, as with a substantive incompetency claim, set forth clear and convincing circumstances that create a real, substantial, and legitimate doubt as to his competency. *Thompson*, 88 So. 3d at 319. The focus of the prejudice inquiry is on whether the defendant's substantive due process right not to be tried while incompetent was violated due to counsel's deficiency. *Id.* When determining competency to proceed pro se, it is permissible to insist on "representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves. *Indiana v. Edwards*, 554 U.S. 164, 178 (2008).

Trial counsel deficiently failed to raise the issue of Wall's competency to proceed at three critical points in his proceedings- when he entered his pleas, during his penalty phase hearing, and during his *Spencer* hearing. Counsel's deficient failure to raise the issue of Wall's competency to proceed prejudiced Wall, because he was incompetent to proceed throughout the proceedings and when he was convicted and sentenced. *Strickland*, 466 U.S. 668; *Thompson*, 88 So. 3d at 319. Trial counsel further deficiently failed to raise the issue of Wall's competence to proceed pro se at two critical points in his proceedings- during his penalty phase hearing and *Spencer* hearing. Counsel's deficient failure to raise the issue of Wall's competence to proceed pro se prejudiced Wall because his severe mental illness rendered him incapable of sufficiently conducting his penalty phase and *Spencer* hearing without the assistance of counsel, and he would not have been sentenced to death if he had the assistance of counsel. *Indiana*, 554 U.S. at 178; *Strickland*, 466 U.S. 668. Wall should be granted an evidentiary hearing on his competency claims, and his convictions and sentences should be subsequently vacated because he was tried and convicted while incompetent due to trial counsel's failure. In the event the Court finds that a retrospective determination of Wall's competency is not cognizable, Wall requests that the Court grant him a new trial in the event he is restored to competency. *See Dougherty v. State*, 149 So. 3d 672, 679 (Fla. 2014); *see also Mason v. State*, 489 So. 2d 734, 737 (Fla. 1986) ("Should the trial court find, for whatever reason, that an evaluation of Mason's competency at the time of the original trial cannot be conducted in such a manner as to assure Mason due process of law, the court must so rule and grant a new trial.").

Dr. Poorman first attempted to evaluate Wall for his competency to self-represent on May 10, 2013. R/1123. She found him incompetent to self-represent due to his behavioral issues, pattern of hunger strikes, and attitude towards her during the attempted evaluation. R/1123. Dr. Poorman was later able to evaluate Wall, and opined that he was competent to represent himself at a

December 20, 2013 hearing. R/1122-27. Dr. Poorman assessed Wall under *Indiana v. Edwards* for his “appraisal of his legal defenses; his ability to plan legal strategy; his ability to question and challenge witnesses; his willingness for standby counsel; ... and his motivation for wanting to go pro se.” R/1123. Dr. Poorman found that Wall met all these criteria, with the caveat that Wall needed to control his profane language so that the Court wouldn’t admonish him and revoke his pro se status. R/1124.

Wall was still represented by counsel when he entered a plea of no contest to the charge for C.J.’s death and guilty to the charge for Taft’s death at his February 13, 2015 plea hearing. R/1927-29; 1931-32. Dr. Poorman opined at the plea hearing that Wall was competent to proceed based on her recent evaluation of him. R/1934-37. However, Dr. Poorman only explicitly discussed one of the six enumerated factors for competency under Fla. R. Crim. P. 3.211(a)(2)- Wall’s ability to appreciate the range and nature of possible penalties. Dr. Poorman explained that Wall understood he could receive a life-sentence if he went to trial, but instead wanted to receive the death penalty to spare the victims’ family going through a trial. R/1935-36. Notably, Dr. Poorman then stated that Wall had not been prescribed any psychotropic medications when she evaluated him, but Wall apprised the Court that he had recently requested Thorazine in an attempt to overdose. R/1937-38. Wall’s recent suicide attempt; his history of erratic and inappropriate behavior in the courtroom¹²; and his mental health records detailing a long history of severe mental illness should have caused trial counsel to question Wall’s competency to proceed.¹³ Trial counsel should have requested that Wall be evaluated for competency by a second doctor to ensure that he was competent to enter his pleas and to proceed to his penalty phase hearing. At the very least,

¹² See *supra* pp. 16-17.

¹³ Trial counsel had copies of Wall’s child-hood psychiatric and educational records, which indicate multiple psychiatric hospitalizations and diagnoses for severe mental illness.

trial counsel should have asked Dr. Poorman to explain if Wall met the other five enumerated factors for competency under Rule 3.211(a)(2). Instead, when asked if he had any questions for Dr. Poorman, trial counsel responded that he did not. R/1937. Dr. Poorman then reiterated her opinion that Wall was competent to proceed pro se. R/1938-39. When asked if he had any questions for Dr. Poorman, trial counsel again responded that he did not. R/1939.

Wall was allowed to self-represent during his penalty phase hearing on February 23, 2015 and February 24, 2015 with Brunvand and Kurpiers (previous trial counsel) appearing as stand-by counsel. The record reflects multiple instances of Wall's inability to meet the factors outlined for competency to proceed during his penalty phase. Wall was consistently incapable of manifesting appropriate courtroom behavior. Fla. R. Crim. P. 3.211(a)(2). During Wall's cross-examination of State witness Grace Thompson he told her "Man, you are high." when he didn't agree with her answer to his previous question. R/2350. The Court admonished Wall for his comment. R/2350-51. During Wall's cross-examination of State witness Danny Welker ("Welker"), Wall insulted Welker- calling him a "criminal", "scumbag" and "idiot." R/2359-60; 2376. The Court was forced to end the cross-examination when Wall would not stop insulting Welker, even after he had been warned not to. R/2376-77. While discussing Grace Thompson's testimony during his penalty phase closing argument, Wall went off on a tangent, stating:

Now, when the State asked [Grace Thompson] the question, she was out front and outside. She said a quote that Laura said, God, somebody help me.

Let me point out to Your Honor, I killed her, and she didn't say that. So that's lie number one. And, again, like I said, I can't question them on the stand, but I can tell you, I don't have nothing to lose. I don't give a fuck if that man pulls that gun and blows my fucking head off. I don't give a fuck, okay?

There's no reason for me to lie at this point. I didn't – she didn't say that. There was none of that crap going on. The building did shake. If you want an honest opinion, like I told Detective Ruhlin over in property and evidence, just fucking ask

me. I will tell you. They could have asked me for the past five years, and I would have gave them every piece of information they want.

I don't care. I mean, I do care, but that's the point. I don't care what my punishment is. You could take me out and put me in an iron maiden. I don't give a fuck. I don't think you could punish me enough for what I did. That's what I believe. Do you understand? I don't think there's enough punishment on Planet Earth of enough suffering for me.

R/3247-48. Wall's constant inappropriate behavior during the penalty phase should have caused standby counsel to question his competence to proceed and request that he be re-evaluated for competency.

Further, even if Wall was found to be competent to proceed during his penalty phase, he certainly was not competent to proceed pro se. The record reflects multiple instances of his inability to sufficiently question and challenge witnesses. As previously explained, Wall's cross-examination of State witness Welker was cut short because Wall could not stop insulting him. *See supra* pp. 21. Further, during Wall's direct-examination of his own witness, Dr. Jon Thogmartin, Wall elicited inculpatory testimony concerning C.J.'s death. Wall called Dr. Thogmartin to testify about abusive head trauma. R/2797-98. Wall demonstrated how he may have incorrectly attempted CPR, then asked if incorrect CPR could have cause C.J.'s posterior rib-fractures. R/2997-3003. Wall didn't appear to realize that Dr. Thogmartin's answers were inculpatory and even repeated some of the most inculpatory testimony:

A. We never see those [posterior rib-fractures] with CPR –

Q. Right.

A. – ever on adults, even elderly people. Children, those are generally a result from extreme thoracic distortion. Usually an impact or a massive compression. They're either from a blow from the rear or a massive impact from – it would be from his left side. In my opinion, probably a big impact or a big squeeze on the one side.

Q. Yeah. A squeeze, right?

A. Right, But not a CPR squeeze –

Q. I'm talking about –

A. – I'm talking about squeeze the life out of the rabbit squeeze.

Q. Right. So it's still possible that it is from what I'm telling you?

A. I would say –

Q. Squeezing hard and not knowing, you know what I'm saying, maybe in a panic?

A. Well, it would be a really, really hard injurious squeeze –

Q. Right.

A. – is the most likely source of that. I wouldn't say possible. I would say most likely it is an extreme inflicted injury –

Q. I'm not – I'm not denying that that's not what it is. What I'm saying is, is it possible that it was caused by that?

A. By what?

Q. What I demonstrated to you.

A. By CPR –

Q. Not CPR, because, obviously, like you indicated, I'm an idiot, and I clearly didn't know what the F [sic] I was doing.

R/3003-05. Wall's apparent inability to sufficiently question and challenge witnesses during the penalty phase should have caused standby counsel to question his competency to proceed pro se and request that he be re-evaluated. The fact that Brunvand and Kurpiers appeared as standby counsel during the penalty phase should not have prevented them from attempting to ensure that Wall was both competent to proceed and competent to proceed pro se.¹⁴ They should have, at any

¹⁴ The FSC recently explained that:

point during the penalty phase, argued that Wall's behavior indicated he was neither competent to proceed or proceed pro se. However, they failed to raise the issue at all.

Wall appeared pro se at the beginning of the first day of his *Spencer* hearing on April 14, 2016. Brunvand and Kurpiers again appeared as standby counsel. R/4797. While returning to the courtroom after a lunch-break, Wall stated on the record that "I hope I don't get a hold of a knife. Fuck boy slammed me in my face in the wall and all that shit when I went in there." R/4897. A "Deputy Miller" then apprised the Court that Wall had just previously refused to walk, had to be carried by several deputies into his holding cell, and had made threats while outside the courtroom. R/4899-4900. The Court then rescinded Wall's pro se status, removed Wall from the courtroom, and reappointed Brunvand and Kurpiers to represent Wall. R/4904-06. Wall was restrained in a chair in an adjoining courtroom to watch the hearing through a video screen. R/4906-07. Before removing Wall, the Court stated:

You've insulted the lawyers. You've insulted the witnesses. You made threats to people just as you did when you walked into the courtroom now when you looked at me and said, "You better hope I never get my hands on a knife." ... I'm not going to endanger security personnel in the back room because you think it's – you enjoy threatening people or saying the things that you've said in regard to this.

R/4902-03.

[t]he role of standby counsel is to assist a court in conducting orderly and timely proceedings. *Behr v. Bell*, 665 So.2d 1055, 1056 (Fla. 1996). Logically speaking, if standby counsel has a good-faith concern that a pro se defendant is incompetent to continue with self-representation, counsel should be able to present that concern to the court. We conclude that allowing standby counsel to make such a request, when it is in good faith, would facilitate orderly and timely court proceedings because it would help to prevent a potentially incompetent defendant from representing himself and then challenging his competency on appeal.

McGirth v. State, 209 So. 3d 1146, 1159 (Fla. 2017).

Brunvand and Kurpiers were deficient for failing to raise the issue of Wall's competency at this critical point in his proceedings. Once Brunvand and Kurpiers were reappointed to represent Wall, they should have immediately requested that the *Spencer* hearing be continued and Wall undergo additional evaluation and a competency hearing to determine if he was competent to proceed. Instead, the *Spencer* hearing continued while Wall was restrained in another room. A reasonably competent attorney would have questioned Wall's competency to proceed once his behavior became so erratic that the Court was forced to remove him from the courtroom during a critical stage of the proceedings against him. Further, Brunvand had been involved in Wall's case for nearly six years by the time of the *Spencer* hearing, and should have been aware of the multiple instances of his previous erratic and inappropriate behavior in the courtroom. *See supra* pp 16-17; 21-24. Kurpiers had been involved in Wall's case for at least a year by the time of the *Spencer* hearing, and also should have been aware of his previous erratic behavior. Brunvand and Kurpiers also had access to Wall's childhood mental health records, which documented a long history of severe mental illness and psychiatric hospitalizations. Wall's inability to manifest appropriate courtroom behavior and documented history of severe mental illness should have caused Brunvand and Kurpiers to question his competency to proceed at the *Spencer* hearing.

Brunvand and Kurpiers were again deficient when they failed to object to Wall resuming self-representation on the second day of the *Spencer* hearing. The fact that Wall was incompetent to proceed clearly rendered him incapable of competently conducting the *Spencer* hearing pro se. However, even if Wall is found to be competent to proceed under the *Dusky* standard, he was still not competent to proceed pro se under *Indiana v. Edwards* due to his severe mental illness. On the second day of the *Spencer* hearing, the Court brought Wall back into the courtroom and advised that he could be present if he assured there would be no further outbursts or disruptions. R/5016-

17. After some discussion, Wall was allowed to proceed and resume pro-se status. R/5022. Notably, when the Court asked if Wall would assure that they wouldn't "have a repeat of yesterday," Wall responded "Not as long as people don't talk about my dead son and fucking hit my head in the wall." R/ 5019-20. Wall was then allowed to conduct the rest of his *Spencer* hearing pro se with Brunvand and Kurpiers as standby counsel.

The record reflects that Wall did not meet all of the criteria for self-representation Dr. Poorman testified to, because he was not able to competently question witnesses without the Court's assistance. The record reflects that the Court had to intervene to clarify witness testimony for Wall during Wall's cross-examination of independent special counsel's witness Dr. Daniel Buffington. During his direct-examination, Dr. Buffington testified that Wall was prescribed several different psychotropic medications, including "Stelazine, Cylert, Cogentin, Eskalith, Ritalin, and Mellaril, as well as some other antidepressants," starting as early as the age of five. R/5055. Dr. Buffington based his testimony on his review of Wall's childhood mental-health records. R/5036. During cross-examination, Wall attempted to undermine the credibility of Dr. Buffington's testimony concerning the medications by stating the records Dr. Buffington relied on were "Hearsay, because [Wall] could make them in an Adobe Acrobat program," and Wall's mother may have altered them in a similar fashion. R/5103-05. The following exchange occurred:

Q. Hearsay, because I could make them in an Adobe Acrobat program. I made the same exact records that you had. I made it myself. I made them on an Adobe Acrobat. I wanted to make sure that I can do it before coming in here and talking about it like a dumb ass. Take the records and wipe them all out and add whatever lines you want. Did you know that with an Adobe you could do that?

A. No, sir. I did not.

Q. There you go. So that woman could have got what you got and she could have added all that crap and even put a doctor's name on the bottom. That's what the problem with hearsay is. That's the problem with letting any record into –

The Court: The question for the doctor, I think, if I can help, Mr. Wall, is if those records are inaccurate, would that change –

The Defendant: His testimony?

The Court: – some of the conclusions that you would come up with?

The Witness: It would have to be a grand totality of inconsistent or fraudulent records because the records span his entire life.

The Court: But if all of those records or substantially all of those records were inaccurate or somehow made up, then that might affect the opinions that you've given us; is that right?

The Witness: Yes, sir. It could.

R/5103-05. The Court had to again assist Wall with his cross-examination of Dr. Buffington a few minutes later. When Wall asked Dr. Buffington how he knew the process for administering medications in the Department of Corrections, this exchange occurred:

Q. How do you know about how medications are given in the Department of Corrections or in this jail?

A. Well, there's something we call medication administration records, and then there are medical orders and nursing notes. Ideally we like to look at the compilation of all of those.

Q. Right. So you went by that?

A. Yes.

Q. But you don't know, like I said earlier when I was objecting, how they did that in here because you've never been to prison, have you?

A. That is incorrect. I've –

Q. You've been to prison?

A. Multiple times. I've –

Q. Wow, dude. You must be a real dick.

The Court: No, he's talking about in a professional capacity.

The Defendant: Yeah. I was wondering how he knows – how he’s up there. I guess they hire ex-felons now to testify for us.

R/5112-13. The record clearly reflects that Wall was not competent to proceed pro se during his *Spencer* hearing because the Court had to assist him with communicating his questions to witnesses and understanding witness testimony. Further, his continued use of profanity indicated his inability to behave appropriately in a courtroom setting. Wall’s incompetent cross-examination of Dr. Buffington and inappropriate behavior should have caused Brunvand and Kurpiers to question his ability to proceed pro se, and they should have objected to his continued self-representation unless he was evaluated further. However, they did not raise the issue at all.

Wall was clearly prejudiced by trial counsel’s failure to raise the issue of both his competency to proceed and competency to proceed pro se during these three critical points in his proceedings. Had counsel raised competency, the Court would have postponed the proceedings and ordered a competency evaluation. Upon further evaluation, there is a reasonable probability that a mental-health expert would have found that Wall was both incompetent to proceed and incompetent to proceed pro se. The fact that Wall was previously found competent would not necessarily have precluded the Court from finding that Wall was currently incompetent. Competency is not a fixed state, and the Court certainly could have taken into account any changes in Wall’s behavior since he had been found competent, including his erratic behavior at the *Spencer* hearing. *See Drope v. Missouri*, 420 U.S. 162, 181 (1975) (“Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.”). The fact that the Court felt that Wall’s behavior was so concerning that he could not be present during a proceeding determining if he would receive the death penalty is a clear and convincing

circumstance that creates a real, substantial, and legitimate doubt as to his competency. Wall was prejudiced because he was convicted and sentenced to death while actually incompetent to proceed. *James*, 957 F.2d at 1571 (the trial of an incompetent defendant is per se prejudicial.).

Wall was further prejudiced by trial counsel's failure to raise the issue of his competency to proceed pro se, because he would have received a life-sentence instead of death if he had adequate counsel to conduct the penalty phase and *Spencer* hearing. The record clearly reflects that Wall's severe mental illness prevented him from competently examining witnesses at his penalty phase and *Spencer* hearing because he inadvertently elicited aggravating testimony and could not question witnesses without the Court's assistance. If trial counsel had been able to present evidence and question witnesses, there is a reasonable probability that Wall would have received a life-sentence instead of death because counsel would have been able to competently question witnesses and would not have attempted to undermine the credibility of the mitigating evidence presented.

As to Claim 2, Wall requests an evidentiary hearing to present the testimony of mental health experts to establish that Wall was rendered incompetent due to severe mental illness during his proceedings, and also the testimony of trial counsel to establish that there was no reasonable trial strategy for failing to raise the issue of Wall's competency. Further, an evidentiary hearing is necessary to introduce copies of mental health records documenting Wall's severe mental illness. Wall further requests that this Court vacate his convictions and sentences of death, as he was incompetent when those convictions and sentences were rendered.

CLAIM 3

WALL MAY BE INCOMPETENT AT THE TIME OF EXECUTION, IN WHICH CASE HIS EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENTS WILL BE VIOLATED.

In accordance with the Eighth Amendment to the United States Constitution, a prisoner cannot be executed if the person “lacks the mental capacity to understand the fact of the impending execution and the reason for it.” Fla. R. Crim. P. 3.811(b). This rule was enacted in response to *Ford v. Wainwright*, 477 U.S. 399 (1986).

This claim could not be raised on direct appeal, because a claim of incompetency to be executed cannot be asserted until a death warrant has been issued. Until the death warrant is signed, the issue is not ripe. *See Jones v. State*, 845 So. 2d 55, 74 (Fla. 2003) (citing *Hall v. Moore*, 792 So. 2d 447, 450 (Fla. 2001)). Likewise, the issue is not ripe under federal law until the death warrant is signed. *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 643-44 (1998) (dismissing Respondent’s *Ford* claim as premature, not because he failed to exhaust his state remedies, but because his execution was not imminent and therefore his competency to be executed could not be determined at that time); *Herrera v. Collins*, 506 U.S. 390, 405-06 (1993) (the issue of sanity [for the *Ford* claim] is properly considered in proximity to the execution).

Federal law requires that in order to preserve a competency to be executed claim, the claim must be raised in the initial petition for habeas corpus, and in order to raise an issue in a federal habeas petition, the issue must be raised and exhausted in state court. Hence, Wall raises this claim now.

This claim does not require an evidentiary hearing.

CONCLUSION AND RELIEF SOUGHT

Wall requests that the Court hold any proceedings and ruling on this motion in abeyance pending the FSC's disposition of the automatic appeal of Wall's Fla. R. Crim. P. 3.851(i) waiver. In the event that the FSC overturns the waiver, Wall prays for the following relief, based on his *prima facie* allegations demonstrating violation of his constitutional rights:

1. That an evidentiary hearing be scheduled so as to allow him to present support for his claims, and that such a hearing be conducted at a reasonable time;
2. That he be allowed leave to supplement this motion should new claims, facts, or legal precedent become available to counsel; that he be allowed leave to amend this motion with any claims requiring his input in the event he is restored to competency; and, on the basis of the reasons presented herein,
3. That his convictions and sentences, including his sentences of death, be vacated.

Respectfully submitted,

/s/ Adrienne Joy Shepherd

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CERTIFICATION PURSUANT TO FLA. R. CRIM. P. 3.851(e)(1)(F)

Pursuant to Fla. R. Crim. P. 3.851 (e)(1)(F), undersigned counsel certifies that counsel has made a good faith effort to discuss the contents of this motion fully with the defendant, and a full and final draft of this pleading has been mailed to Craig Alan Wall, Sr. Counsel maintains that Mr. Wall was unable to fully discuss the contents of this motion because he is currently incompetent. Undersigned counsel further certifies that counsel has complied with Rule 4-1.4 of the Rules of Professional Conduct, and that this motion is filed in good faith.

Respectfully submitted,

/s/ Adrienne Joy Shepherd

Adrienne Joy Shepherd

Assistant CCRC

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the PDF document of the foregoing has been transmitted to this Court through the Florida Courts E-Filing Portal on this 26th day of September, 2019.

WE HEREBY FURTHER CERTIFY that a copy of the PDF document of the foregoing has been served via the Florida Courts E-Filing Portal to the Judicial Assistant of **Honorable Philip J. Federico**, Circuit Court Judge, Sixth Judicial Circuit, 14250 49th Street North, Clearwater, Florida 33762, at plee@jud6.org; to **Marilyn Muir Beccue**, Assistant Attorney General, Office of the Attorney General, at marilyn.beccue@myfloridalegal.com and capapp@myfloridalegal.com, and to **Sara Elizabeth Macks**, Assistant State Attorney, Office of the State Attorney for the Sixth Judicial Circuit, at sa6appealservice@co.pinellas.fl.us and smacks@co.pinellas.fl.us, on this 26th day of September, 2019.

WE HEREBY FURTHER CERTIFY that a copy of the foregoing has been sent via U.S. mail to the **Honorable Philip J. Federico**, Circuit Court Judge of the Sixth Judicial Circuit, at his listed address: Chamber 13, 14250 49th Street North, Clearwater, FL 33762; and **Mr. Craig Wall, Sr.**, DOC# 140726, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 on this 26th day of September, 2019.

/s/ Adrienne Joy Shepherd
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**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**CASE NO: CRC10-03759CFANO
SUPREME COURT NO: SC16-1221
POST-CONVICTION CAPITAL CASE**

CRAIG ALAN WALL, SR.,

Defendant.

_____ /

**DEFENDANT'S MOTION TO VACATE JUDGMENTS OF CONVICTION AND
SENTENCES OF DEATH PURSUANT TO FLORIDA RULE OF CRIMINAL
PROCEDURE 3.851**

ATTACHMENT A

JUDGMENT AND SENTENCE RENDERED JUNE 3, 2016



SENTENCE

(as to Count 01)

The defendant, being personally before the court, accompanied by the defendant's attorneys of record, **BJORN E BRUNVAND**, and **RONALD J, KURPIERS II**, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

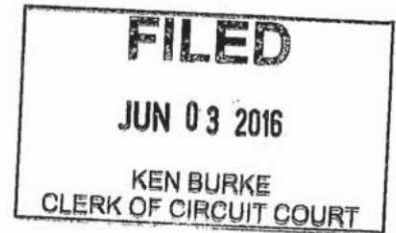
The Defendant pay total statutory costs in the amount of **\$650.00** , inclusive of, **\$100.00** as a Costs of Prosecution assessment. These assessments are hereby imposed as liens.

The Defendant is **committed to the custody of the Department of Corrections.**

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **DEATH.**



SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

No Contact Order

It is further ordered that the defendant is prohibited from having contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence.

SENTENCE

(as to Count 02)

The defendant, being personally before the court, accompanied by the defendant's attorneys of record, **BJORN E BRUNVAND**, and **RONALD J, KURPIERS II**, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of **\$650.00** , inclusive of, **\$100.00** as a Costs of Prosecution assessment. These assessments are concurrent with Count 1.

The Defendant is **committed to the custody of the Department of Corrections.**

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **DEATH.**

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

Consecutive/Concurrent As To Other Counts **It is further ordered that the sentence imposed for this count shall run consecutive with the sentence set forth in count 1**

No Contact Order **It is further ordered that the defendant is prohibited from having contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence.**

Other Provisions: (continued)

Jail Credit

It is further ordered that the defendant shall be allowed a total of 2295 Days as credit for time incarcerated before imposition of this sentence.

It is further ordered that:

Restitution is not applicable in this case.

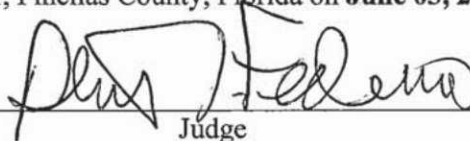
Restitution to State:

If applicable, you must make payment of any debt due and owing to the state under section 960.17 and 948.03(1)(h) Florida Statutes. The amount of such debt shall be determined by the Court at a later date upon final payment of the Crimes Compensation Trust Fund on behalf of the victim.

In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing a notice of appeal within 30 days from this date with the clerk of the court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

DONE AND ORDERED in open court at Clearwater, Pinellas County, Florida on **June 03, 2016**.



Judge

**CIRCUIT/COUNTY COURT, PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION**

UCN: 522010CF003759XXXXNO

Case No.: 1003759CFANO

STATE OF FLORIDA

Citation No.:

VS.

Person ID: 1474146

CRAIG ALAN WALL

DOB: 03/21/1975

JUDGMENT FOR FINES AND COSTS

THIS COURT HAVING PREVIOUSLY ORDERED THE DEFENDANT TO PAY FINES AND COSTS IN ACCORDANCE WITH THE PROVISIONS OF THE FLORIDA STATUTES;

IT IS ORDERED AND ADJUDICATED THAT THE STATE OF FLORIDA DOES HAVE THE RIGHT TO RECOVER OF AND FROM THE ABOVE NAMED DEFENDANT THE FOLLOWING FINE AND COSTS:

\$550.00	FELG BASIC FELONY GUILTY ANY DEGREE
\$100.00	FELG STATE ATTY COSTS FEL \$100
\$ 650.00	TOTAL

IT IS FURTHER ORDERED THAT THIS JUDGMENT WILL BE RECORDED BY THE CLERK OF COURT AS A JUDGMENT LIEN IN FAVOR OF THE CLERK OF COURT, ON BEHALF OF THE STATE OF FLORIDA, IN THE OFFICIAL RECORDS IN PINELLAS COUNTY.

DONE AND ORDERED ON JUNE 03, 2016 IN PINELLAS COUNTY, FLORIDA.



JUDGE: PHILIP J. FEDERICO

RETURN TO CRIMINAL COURT RECORDS

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 INITIAL BRIEF

APPENDIX G

October 8, 2019 State's Motion to Strike Defendant's Motion to Vacate Judgments
of Conviction and Sentences of Death Pursuant to Florida Rule of Criminal
Procedure 3.851

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. CRC 10-03759 CFANO
DEATH PENALTY CASE

CRAIG ALAN WALL, SR.,

Defendant.

_____ /

STATE'S MOTION TO STRIKE DEFENDANT'S MOTION TO VACATE JUDGMENTS
OF CONVICTION AND SENTENCES OF DEATH PURSUANT TO FLORIDA RULE OF
CRIMINAL PROCEDURE 3.851

COMES NOW, Plaintiff, State of Florida, by and through the undersigned counsel and hereby files this motion to strike Defendant's Motion to Vacate Judgments of Conviction and Sentences of Death Pursuant to Florida Rule Of Criminal Procedure 3.851 filed on September 26, 2019. The State of Florida responds as follows:

1. On September 18, 2019, this Court entered an order Denying in Part and Granting in part Defendant's "Motion to Monitor and Remove Counsel Pursuant to § 27.711(2) Findings and if Denied 3.851(I) Motion to Dismiss All Counsel and Postconviction Proceedings". The order also discharged Capitol Collateral Regional Counsel.

2. This Court specifically granted "Defendant's unequivocal requests to waive any and all postconviction proceedings and discharge counsel".
3. Despite the Court's order, Defendant's counsel filed a Motion to Vacate Judgments of Conviction and Sentences of Death Pursuant to Florida Rule Of Criminal Procedure 3.851 on September 26, 2019.

For the foregoing reasons, the State of Florida respectfully requests that this Court enter an order striking Defendant's Motion to Vacate Judgments of Conviction and Sentences of Death Pursuant to Florida Rule of Criminal Procedure 3.851.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Marilyn Muir Beccue
MARILYN MUIR BECCUE
Senior Assistant Attorney General
Florida Bar No. 119581
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
marilyn.beccue@myfloridalegal.com
E-Service: capapp@myfloridalegal.com

CO-COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October 2019, I electronically filed the foregoing with the Clerk of the Court by using the e-portal filing system which will send a notice of electronic filing to the following: The Honorable Philip J. Federico, Circuit Court Judge, 14250 49th Street North, Clearwater, Florida 33762 (**plee@jud6.org**); Sara Macks, Assistant State Attorney, State Attorney's Office, Sixth Judicial Circuit, Post Office Box 5028, Clearwater, Florida 33758-5028 (**SA6eService@pinellascounty.org** and **smacks@co.pinellas.fl.us**); Adrienne Joy Shepherd, Lisa Marie Bort and Ali A. Shakoor, Assistant CCRC, Capital Collateral Regional Counsel - Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637-0907 (**shakoor@ccmr.state.fl.us**, **shepherd@ccmr.state.fl.us**, **bort@ccmr.state.fl.us** and **support@ccmr.state.fl.us**).

/s/ Marilyn Muir Beccue
CO-COUNSEL FOR 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 INITIAL BRIEF

APPENDIX H

October 14, 2019 Pro Se Motion to Strike and Motion to Order the Clerk of Court
to Correct Record on Appeal

RECIEVED
UNION CORRECTIONAL INSTITUTION

UCT 14 2019
BY: 
FOR MAILING

IN THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA,

v.

CASE # CRC10-03759 CFANO

CRAIG ALAN WALL, SR.

_____ /

MOTION TO STRIKE
AND
MOTION TO ORDER THE CLERK OF COURT
TO CORRECT RECORD ON APPEAL

COMES NOW Defendant CRAIG ALAN WALL, SR., *pro se*, and moves this Court to Strike from the record the illegal and unauthorized filing of Capital Collateral Regional Counsel's (CCRC) 3.851 Post-conviction "Motion To Vacate Judgment and Sentence" et. al. This Court has the duty, and jurisdiction, to strike that illegal submission per Fl. R. App. P. 9.600(a) and 9.040(a), (c), (d), (e), as no hearing is necessary as this requires only a ruling based on the MERITS of this Motion to Strike unauthorized filings on the face of the record. Defendant presents the following in support:

STATEMENT OF FACTS

1. This Court held a hearing on August 23, 2019. At that hearing this Court:

(a) Conducted a *faretta* [*v. California*, 422 U.s. 806 (1975)] hearing, And made Defendant *pro se*. By law, Defendant remains *pro se* until a court revokes or removes that status, or counsel is assigned to Defendant. Since neither of these have occurred, Defendant remains *pro se*.

(b) Further at that hearing, this Court granted Defendant's *pro se* motion 3.851 (i) dismissing CCRC Counsel as well as ALL post-conviction proceedings. Therefore, as of August 23, 2019, CCRC ceased to be counsel for Defendant and were "dismissed" / "discharged" by this Court's order.

2. On Friday, September 13, 2019, CCRC Counsel Lisa Bort and Ali Shakoor visited Defendant for a very short time, simply to hand Defendant a 28 U.S.C. §2254 Federal Habeas Corpus blank form, and a draft of a 3.851 Motion being prepared by CCRC Counsel Adrienne Shepherd. (See: Exhibit-"A"). Defendant was told by Ms. Bort she would call Defendant on the following Tuesday, September 17, 2019, to discuss any questions Defendant had, since they had no time to do so during the visit.

3. On Tuesday, September 17, 2019 CCRC's Ms. Bort called Defendant. Defendant advised CCRC that he was mailing a "Notice of Appeal to the Florida Supreme Court," and that jurisdiction would no longer be with this Court, so they

would be legally barred from filing anything in the lower tribunal.

4. On Tuesday, September 17, 2019, Defendant mailed two (2) copies of his *Pro se* “Notice of Appeal to the Florida Supreme Court,” which was docketed by the Clerk on September 23rd, and the Court docket further shows on September 24th “Certified copy of Notice of Appeal forwarded to SUPREME COURT, DOC # 257.” At that point jurisdiction was transferred to the Florida Supreme Court. (See: Exhibit – “D”).

5. On September 18, 2019, this Court signed a written order on its rulings of the August 23rd hearing, (although the Clerk has not put it on the Court docket). Said order states that CCRC is “DISCHARGED.”

6. On September 26, 2019, CCRC Adrienne Shepherd filed a 3.851 Motion To Vacate, et. al. in violation of Court orders, without leave and against *pro se* Defendant’s instructions, and contrary to law. (See: Exhibit “B”).

7. due to the unethical and abusive nature of said motion, counsel Lisa Marie Bort removed her name from the motion. (See: Exhibit “A” and Exhibit “B”).

8. In order to circumvent and violate law, specifically 3.851 (F), CCRC Adrienne Shepherd claimed she violated the REQUIREMENT of 3.851 (F) because Defendant “was unable to fully discuss the contents of this Motion because he is currently incompetent.”

ARGUMENT

This is VERY simple: CCRC / Adrienne Shepherd was discharged / dismissed SPECIFICALLY to prevent this woman (Shepherd) from filing a 3.851 Motion. This was ordered verbally on August 23, 2019, and Defendant was granted *Pro se* status at that hearing—which remains unchanged. Discharge of CCRC occurred thirty-five (35) days prior to this illegal filing of a 3.851 by Ms. Shepherd.

There is no rule, statute, or case law that permits any filings of this kind once jurisdiction has been transferred to a higher appellate court. Rules dictate jurisdiction transfers at the moment a Notice of Appeal is filed by the Clerk of the Lower Tribunal. Defendant filed such a Notice on September 23, 2019 – 3 days prior to the illegal filing of the 3.851 Motion by Ms. Shepherd. Therefore, it is clear that Ms. Shepherd unethically filed this Motion KNOWING this Court no longer had jurisdiction.

Ms. Shepherd's filing was an outright abuse of the Clerk of the Court, as she knew the Clerk is required to file ANYTHING it receives regardless of whether the Clerk has jurisdiction or not. That's not for the Clerk to determine, it is upon the Court to determine jurisdiction and to order the Clerk not to accept any filings. This Court failed to give such instruction to the Clerk, so the Clerk will docket anything and everything they receive until this Court instructs otherwise. Ms.

Shepherd took advantage of this Court's oversight to unethically file her illegal motion, which she knows will be forwarded to the Florida Supreme Court as part of the record. This is manipulation by Ms. Shepherd of the Clerk, and this Court because she knows it would be filed, accepted, forwarded to the Florida Supreme Court, and that this Court would be unable to do anything upon its own volition, which required *pro se* Defendant to file this Motion to Strike to allow this Court to legally correct this matter.

When Ms. Bort and Mr. Shakoor visited Defendant on September 13th to simply drop of the incompleated draft of the 3.851 Motion (Exhibit – "A"), Defendant vehemently argued that CCRC was "Fired" by Court order, and that Defendant was instructing them not to file it. Defendant also told Ms. Bort that "You are violating 3.851(F) because you are just dropping this off, and it's not complete, so you are not "discussing the contents of the Motion FULLY" with me, as the rule demands."

Ms. Bort advised Defendant that they knew I did not want them to file that, and she also stated she knew they were violating 3.851 (F) and that she was told to simply drop off the draft and leave. She advised she would call me on Tuesday (September 17th) to discuss ONLY any questions regarding how to fill-out the

blank Federal Habeas petition she also handed me.

On Tuesday, September 17, 2019, Defendant spoke to Ms. Bort by phone. Defendant, having now read the draft of the 3.851 Motion, began the phone call by angrily asking Ms. Bort how she could have her name on this 3.851 Motion, or be a part of it since it was being used by Ms. Shepherd to simply attack Defendant in order to protect Ms. Shepherd from Defendant's pending Bar Complaints and Defendant's claims against her in this Court as well as the Florida Supreme Court. Defendant explained to Ms. Bort that if you remove the cover page so you don't know who wrote it, anyone reading it would believe the State Attorney's Office wrote it to harm Defendant. Then Defendant pointed out several sections of the Motion draft which were attacks simply for the sake of harm to Defendant, as well as several falsifications of the record, and that Ms. Shepherd was relinquishing ALL of Defendant's Ineffective Assistance of Counsel (IOC) claims against trial counsel, by stating claims and Nelson hearings were based on nothing but "Paranoia" and were without any merit. Defendant told Ms. Bort that this being filed was tantamount to sabotage by Ms. Shepherd of any IOC claims Defendant has, and that Defendant was not "paranoid" and the objections, and IOC claims he made, stand.

Defendant then pointed out to Ms. Bort that Ms. Shepherd also lied on page 9 of the draft by falsifying the transcript of the April 14, 2016 *Spencer* hearing.

Ms. Shepherd, to make Defendant seem WORSE than what the record reflects, stated on page 9 of the draft (Exhibit – “A”) “Wall threatened to kill everyone in the courtroom. R/4897-4906.” Defendant told Ms. Bort that was an outright LIE, and that Defendant didn’t threaten ANYONE “in the courtroom,” let alone “EVERYONE” in the courtroom.” (See: Exhibit – “C”). Ms. Bort stated that she didn’t write anything in the 3.851 Motion, that Ms. Shepherd ALONE prepared the document, and that she was unaware of the contents of the Motion or that Ms. Shepherd was relinquishing the claims Defendant made of IOC against trial counsel as “paranoid”, or that Ms. Shepherd misquoted the record on purpose like that to say I “threatened to kill everyone in the Courtroom.” Ms. Bort stated she would read the Motion “more closely”, and relay to her “supervisors” what Defendant said and that Defendant again asserted they were purposefully violating 3.851 (F) bhy not discussing the contents of any completed Motion FULLY with Defendant. Ms. Bort also told Defendant that if his claims regarding the 3.851 Motion were true, that Ms. Bort would “never be part of something like that.”

This Court will note that Ms. Lisa Marie Bort is on the draft (Exhibit- “A”), but after verifying Defendant’s claims Ms. Bort removed her name from the filed motion (Exhibit - “B”). This Court should give GREAT significance to Ms. Bort removing her name from this unethical attack document filed, and prepared SOLELY, by Ms. Shepherd.

Defendant received, by mail, the completed and filed 3.851 by Ms. Shepherd. (Exhibit – “B”). As explained above, Ms. Bort removed her name from the document because she believes it’s inappropriate and unethical. This Court will also note the lies on page 9 were altered, but still attempted to be used to attack defendant based on selected quotes used to mislead.

The most glaring unethical and illegal act of Ms. Shepherd, was her falsifying the certification pursuant to FLA. R. CRIM. P. 3.851 (e)(1)(F) on page 31 of Exhibit – “B”. As noted herein, the only CCRC Counsel Defendant spoke to was Ms. Bort, and she removed her name from this travesty of a Motion. Further, as evidenced by the alteration of Ms. Shepherd’s lies on page 9, Defendant clearly is “competent” and affected an aspect of this filing. It was a purposeful unethical and illegal act of Adrienne Shepherd to CHOOSE to not FULLY discuss this completed motion with Defendant. Defendant has been certified “competent” by this Court on multiple occasions, and more importantly this Court found Defendant “competent” on August 23, 2019 – thirty-five (35) days before she filed this motion.

The certification violates the law, on purpose and with intent, to deprive Defendant of his rights. Since this certification is false, on the face of the record, and also based on evidence presented herein, the Motion is void for violating Bar Rule 4-1.4 as well as 3.851(e)(1)(F), knowingly and with intent.

CONCLUSION

The 3.851 Motion filed by CCRC's Adrienne Shepherd is illegal. No law or rule permits such filing, and defeats the purpose of everything Defendant did regarding his 3.851 (i) Dismissing Counsel and all post-conviction proceedings.

The 3.851 Motion is an attack on Defendant, and serves no defense objective on behalf of Defendant. It is a self-serving attack against Defendant by Adrienne Shepherd.

The 3.851 Motion is unethical, as evidenced by CCRC's Lisa Marie Bort having her name removed from it and disavowing it.

The 3.851 illegally forfeits and relinquishes Defendant's claims regarding every Ineffective Assistance of Counsel Claim Defendant made against trial counsel, which Defendant VEHEMENTLY objects to. No ethical lawyer would EVER do this, which shows the true intent of Ms. Shepherd in filing this. No defense lawyer would ever forfeit a single IOC claim, and Ms. Shepherd is forfeiting ALL of Defendant's as "paranoid." This cannot be allowed by this Court.

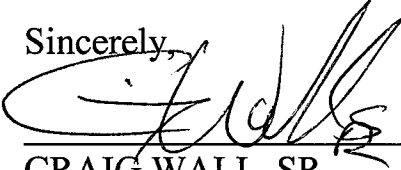
The 3.851 Motion violates this Court's orders to include: CCRC is "DISCHARGED," all post-conviction appeals are waived; Defendant is "COMPETENT"; Defendant is "*PRO SE*". The 3.851 filing is, therefore, in contempt of Court.

The certification pursuant to FLA. R. CRIM. P. 3.851 (e)(1)(F) was clearly a lie and not filed "in good faith," and contrary to the laws of Florida and in violation of Defendant's Constitutional Rights.

Therefore, this Court has a duty and obligation to protect Defendant's rights under the laws of Florida, and STRIKE the illegal, unethical, and unauthorized 3.851 "Motion to Vacate Judgment and Sentence," et. al. by Adrienne Joy Shepherd, WITH PREJUDICE.

Further, this Court has the duty to direct the Clerk of the Circuit Court to Correct the record on Appeal to the Florida Supreme Court, that said Motion was stricken WITH PREJUDICE, and that the Clerk is to file no more documents in this cause from any party involved.

Sincerely,



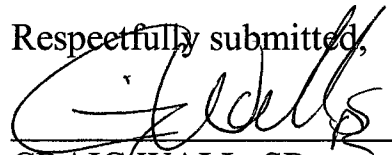
CRAIG WALL, SR.
PRO SE DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing and Exhibits has been sent via U.S. Mail to: Honorable Philip Federico, 14250 49th St. N., Chamber 13, Clearwater, Florida 33762; Asst. State Attorney Sara Macks, Office of the State Attorney—14250 49th St. N., Clearwater, Florida 33762; Asst. Florida Attorney General Marilyn Beccue, Office of the Florida Attorney General, 3507 E. Frontage Rd., Suite 200, Tampa, Florida 33607; and Asst. Chief CCRC Gerod Hooper, 12973 N. Telecom Pkwy., Temple Terrace, Fl. 33637.

On this 14th day of October, 2019.

Respectfully submitted,



CRAIG WALL, SR.

PRO SE DEFENDANT

Craig Wall, Sr. #140726

Union Correctional Institution

P.O. Box 1000

Raiford, Florida 32083

(386) 431-2000\

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 INITIAL BRIEF

APPENDIX I

October 17, 2019 Order Granting the State's Motion to Strike; Order Striking
Capital Collateral Regional Counsel's Motion to Vacate Judgments of Conviction
and Sentences of Death; Directions to Clerk

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION**

STATE OF FLORIDA,

v.

CRAIG ALAN WALL, SR.

Person ID: 1474146, Defendant. /

CASE NO.: CRC10-03759CFANO

UCN: 522010CF003759XXXXNO

DIVISION: M

ORDER GRANTING THE STATE'S MOTION TO STRIKE;
ORDER STRIKING CAPITAL COLLATERAL REGIONAL COUNSEL'S MOTION TO
VACATE JUDGMENTS OF CONVICTION AND SENTENCES OF DEATH;
DIRECTIONS TO CLERK

THIS CAUSE came before the Court upon Capital Collateral Regional Counsel's "Motion to Vacate Judgments of Conviction and Sentences of Death," filed on September 26, 2019, pursuant to Florida Rule of Criminal Procedure 3.851. On October 8, 2019, the State filed a Motion to Strike Defendant's Motion to Vacate Judgments of Conviction and Sentences of Death. Having reviewed the motions, the record, and the applicable law, this Court finds as follows:

Procedural History

On February 13, 2015, Defendant pled guilty to the first-degree murder of Laura Taft ("Laura") (count one), and *nolo contendere* to the first-degree murder of Craig Wall, Jr. ("C.J.") (count two). Defendant's plea was the culmination of protracted plea negotiations, which he initiated with the State. Defendant originally offered to plead guilty to Laura's murder in exchange for a guaranteed sentence of death. The parties ultimately agreed that Defendant would plead guilty to Laura's murder and *nolo contendere* to C.J.'s murder, and the Court would impose sentence pursuant to section 921.141, Florida Statutes. On June 3, 2016, the trial court sentenced Defendant to death. His conviction and sentence were affirmed on appeal; the mandate issued on March 15, 2018. See Wall v. State, 238 So. 3d 127 (Fla. 2018), cert. denied sub nom. Wall v. Florida, 139 S. Ct. 329 (2018), reh'g denied, 139 S. Ct. 624 (2018)). On March 29, 2018, Capital Collateral Regional Counsel – Middle Region ("CCRC") filed its notice of appearance.

On June 8, 2018, August 30, 2018, November 30, 2018, February 15, 2019, and April 26, 2019, this Court held status conferences pursuant to Rule 3.851(c)(2). On July 22, 2019, Defendant filed his *pro se* "Motion to Monitor and Remove Counsel Pursuant to §27.711(2) Findings and if Denied 3.851(i) Motion to Dismiss All Counsel and Post-Conviction Proceedings." On August 2,

2019, a status conference was held pursuant to Rule 3.851(c)(2); Defendant's *pro se* motion was discussed, and the Court scheduled a hearing on Defendant's motion for August 23, 2019. CCRC orally requested that the Court order a competency evaluation by at least two experts; however, CCRC's preliminary request was denied without prejudice to CCRC raising the issue at the motion hearing in accordance with Rule 3.851(i)(4). On August 5, 2019, CCRC filed a motion for determination of competency. The Court treated the motion as a motion for reconsideration, and on August 14, 2019, entered an order denying the motion.¹

On August 23, 2019, the Court held a hearing on Defendant's *pro se* motion. Defendant's "Motion to Monitor and Remove Counsel Pursuant to §27.711(2)" was denied, but his "Motion to Dismiss All Counsel and Post-Conviction Proceedings" was granted and CCRC was discharged from representation. On September 18, 2019, this Court entered a written order memorializing its findings in accordance with Rule 3.851(i)(7), and directing discharged counsel to file two copies of a notice seeking review in the Supreme Court of Florida, in accordance with Rule 3.851(i)(8)(B). (*Exhibit A: Order, without attachments*). On September 26, 2019, CCRC filed a "Motion to Vacate Judgments of Conviction and Sentences of Death," and on October 8, 2019, the State filed a Motion to Strike the motion. On October 10, 2019, CCRC filed its notice seeking review in the Supreme Court of Florida pursuant to Rule 3.851(i)(8)(B); the mandatory appeal is currently pending before the Florida Supreme Court, case number SC19-1727.

Analysis

CCRC has filed a motion for postconviction relief raising three grounds relating to Defendant's competency. In the motion, CCRC acknowledges that it has been discharged from representing Defendant, but indicates that the motion is filed in an abundance of caution to preserve Defendant's right to challenge his convictions and sentences in both state and federal proceedings in the future, and ensure that Defendant's October 9, 2019 deadline to file the motion was properly met. See Fla. R. Crim. P. 3.851(d). CCRC requests that the Court reserve ruling on the motion pending the Florida Supreme Court's disposition of the appeal of Defendant's waiver of collateral postconviction relief, and requests leave to amend the motion to include claims that require consultation with Defendant in the event that the Florida Supreme Court overturns Defendant's waiver of postconviction proceedings. In response, the State moves to strike CCRC's motion. The State argues that this Court's September 18, 2019 order granted Defendant's unequivocal requests

¹ The Court's August 14, 2019 order is hereby incorporated by reference.

to waive any and all postconviction proceedings and discharged counsel, and therefore requests that CCRC's motion be stricken.

CCRC's motion must be stricken because it is not properly before this Court. CCRC was discharged from its representation of Defendant, except to the extent required by Rule 3.851(i)(8)(B), effective August 23, 2019. (*Exhibit A*). Therefore, CCRC no longer represented Defendant at the time it filed its Motion to Vacate on September 26, 2019, and did not have standing to file the motion. See Durocher v. Singletary, 623 So. 2d 482, 485 (Fla. 1993) (holding that CCRC had no right to represent the defendant if the defendant chose to waive such counsel and was competent, and that CCRC had no standing as a "next friend" to proceed on the defendant's behalf). In light of the foregoing, the State's Motion to Strike is granted, and CCRC's Motion to Vacate Judgments of Conviction and Sentences of Death is stricken.

Accordingly, it is

ORDERED AND ADJUDGED that the State's Motion to Strike is hereby **GRANTED**.

IT IS FURTHER ORDERED AND ADJUDGED that Capital Collateral Regional Counsel's "Motion to Vacate Judgments of Conviction and Sentences of Death" is hereby **STRICKEN**.

THE CLERK IS HEREBY DIRECTED to immediately serve a copy of this order upon the State, the Office of the Attorney General, Capital Collateral Regional Counsel, Defendant, and the Florida Supreme Court along with a certificate of service. The Clerk shall promptly notify the undersigned when service has been completed.

THE PARTIES ARE HEREBY NOTIFIED that this is a final order and they have thirty (30) days from the date of this order to appeal, should they choose to do so.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this ____ day of October, 2019. A true and correct copy of the foregoing has been furnished to the parties indicated below.

Philip J. Federico, Circuit Judge

Original Signed

OCT 17 2019

PHILIP J. FEDERICO
Circuit Judge

Copies furnished to:

Sara E. Macks, Assistant State Attorney
Office of the State Attorney, Sixth Judicial Circuit,
14250 49th Street N.
Clearwater, FL 33762

Marilyn M. Beccue, Assistant Attorney General
Office of the Attorney General,
Concourse Center 4
3507 E. Frontage Rd., Suite 200
Tampa, FL 33607

Adrienne Joy Shepherd, Ali Shakoor, & Lisa Marie Bort, Assistant CCRCs
Law Office of the Capital Collateral Regional Counsel-Middle Region
12973 North Telecom Parkway
Temple Terrace, FL 33637

Craig Alan Wall, Sr., DC# 140726
Defendant
Union Correctional Institution
Post Office Box 1000
Raiford, FL 32083

The Honorable John Tomasino, Clerk of the Florida Supreme Court,
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

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 INITIAL BRIEF

APPENDIX J

October 23, 2019 Notice of Appeal

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

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

CRAIG ALAN WALL, SR.,

Defendant.

_____ /

NOTICE OF APPEAL

NOTICE IS GIVEN of the filing of this Notice of Appeal to the Supreme Court of Florida to review the final order rendered by the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, dated October 17, 2019.

The nature of the order appealed is an “Order Granting the State’s Motion to Strike; Order Striking Capital Collateral Regional Counsel’s Motion to Vacate Judgments of Conviction and Sentences of Death; Directions to Clerk”.

All parties to said cause are hereby notified of the entry of this appeal.

Respectfully submitted,

/s/ Lisa Marie Bort

Lisa Marie Bort
Assistant CCRC
Florida Bar Number 0119074
Email: bort@ccmr.state.fl.us

/s/ Adrienne Joy Shepherd

Adrienne Joy Shepherd
Assistant CCRC
Florida Bar Number 1000532
Email: shepherd@ccmr.state.fl.us

/s/ Ali Shakoor

Ali Shakoor

Assistant CCRC

Florida Bar Number 0669830

Email: shakoor@ccmr.state.fl.us

The Law Office of the Capital Collateral

Regional Counsel - Middle Region

12973 North Telecom Parkway

Temple Terrace, Florida 33637-0907

Tel: (813) 558-1600

Fax: (813) 558-1601

Secondary Email: support@ccmr.state.fl.us

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the PDF document of the foregoing has been transmitted to this Court through the Florida Courts E-Filing Portal on this 23rd day of October, 2019.

WE HEREBY FURTHER CERTIFY that a copy of the PDF document of the foregoing has been served via the Florida Courts E-Filing Portal to the Judicial Assistant of the **Honorable Philip J. Federico**, Circuit Court Judge, Sixth Judicial Circuit, 14250 49th Street North, Clearwater, Florida 33762 at plee@jud6.org; to **Marilyn Muir Beccue**, Assistant Attorney General, Office of the Attorney General, at marilyn.beccue@myfloridalegal.com and capapp@myfloridalegal.com, and to **Sara Elizabeth Macks**, Assistant State Attorney, Office of the State Attorney for the Sixth Judicial Circuit, at sa6appealservice@co.pinellas.fl.us and smacks@co.pinellas.fl.us, on this 23rd day of October, 2019.

WE HEREBY FURTHER CERTIFY that a copy of the foregoing has been sent via U.S. mail to **Craig Wall, Sr.**, DOC # 140726, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083, on this 23rd day of October, 2019.

Respectfully submitted,

/s/ Lisa Marie Bort

Lisa Marie Bort

Assistant CCRC

Florida Bar Number 0119074

Email: bort@ccmr.state.fl.us

Secondary Email: support@ccmr.state.fl.us

/s/ Adrienne Joy Shepherd

Adrienne Joy Shepherd

Assistant CCRC

Florida Bar Number 1000532

Email: shepherd@ccmr.state.fl.us

Secondary Email: support@ccmr.state.fl.us

/s/ Ali Shakoor

Ali Shakoor

Assistant CCRC

Florida Bar Number 0669830

Email: shakoor@ccmr.state.fl.us

Secondary Email: support@ccmr.state.fl.us

The Law Office of the Capital Collateral

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