

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1727

CRAIG ALAN WALL, SR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN
AND FOR PINELLAS COUNTY, STATE OF FLORIDA
Lower Tribunal No. 522010CF003759XXXXNO**

**INITIAL BRIEF OF THE APPELLANT PURSUANT TO FLORIDA RULE OF
CRIMINAL PROCEDURE 3.851(i)(8)(B)**

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RECEIVED, 10/29/2019 02:15:30 PM, Clerk, Supreme Court

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PRELIMINARY STATEMENT

The defendant, Craig Alan Wall, Sr., (hereinafter referred to as “Wall”), by and through undersigned counsel, files this brief in accordance with Florida Rule of Criminal Procedure 3.851(i)(8). *See Fla. R. Crim. P. 3.851(i)(8)(B)*. 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. The post-conviction court granted Wall’s waiver and discharged undersigned counsel in an order rendered September 18, 2019. Capital Collateral Regional Counsel (“CCRC”) 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 to ensure that the October 9, 2019 deadline for filing Wall’s state and federal post-conviction claims was met. On October 8, 2019, the State filed a motion to strike CCRC’s Rule 3.851 motion. On October 17, 2019, the post-conviction court issued an order granting the State’s motion and striking CCRC’s Rule 3.851 motion. CCRC filed a notice of appeal of the post-conviction court’s order striking the motion on October 23, 2019. The post-conviction court’s September 18, 2019 order granting Wall’s waiver is before this Court for review. CCRC is contemporaneously filing a “Motion to Consolidate” with this initial brief, requesting that this Court consider CCRC’s appeals of both the post-conviction

court's September 18, 2019 and October 17, 2019 orders, as both appeals present interrelated issues.

The record on appeal from Wall's direct appeal will be cited as "R/[page number]." The record on appeal for Wall's waiver of his post-conviction counsel and proceedings will be cited as "P/[page number]." All other references will be self-explanatory or otherwise explained.

REQUEST FOR ORAL ARGUMENT

Undersigned counsel is not requesting an oral argument.

STATEMENT OF THE CASE AND FACTS

Trial Proceedings

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. This Court 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) (footnotes omitted).

Wall made multiple *Nelson*¹ requests to remove his various trial attorneys throughout his proceedings. Wall also made several *Faretta*² requests for self-representation. The trial court appointed Dr. Jill Poorman (“Dr. Poorman”) to evaluate Wall’s competency to proceed pro se. In a May 10, 2013 report, Dr. Poorman initially found that Wall was not competent to represent himself. 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, with the caveat that he needed to control his vulgar language or risk the trial court rescinding his pro se status.⁴ R/1122-27. Wall was allowed to briefly proceed pro se with standby counsel after a successful *Faretta* inquiry at a February 7, 2014 hearing. R/1252; 1278-1311. However, Wall later relinquished his pro se status prior to entering his pleas. R/6640-59.

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

² *Faretta v. California*, 422 U.S. 806 (1975).

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

⁴ As further detailed below, Wall was unable to control his vulgar language and erratic behavior in the courtroom due to his severe mental illness, causing the trial court to rescind his pro se status and reappoint counsel during his *Spencer v. State*, 615 So. 2d 688 (Fla. 1993) hearing. *See infra* pp. 20-21.

Wall argued during several pre-trial hearings that he wanted to enter into a negotiated plea for the death penalty.⁵ 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 Wall's open plea, 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 evaluation of him on February 10, 2015. R/1934-39. The trial court conducted a *Faretta* inquiry, and determined that Wall could conduct his penalty phase pro se with his previous trial counsel present as standby counsel. 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.

Over Wall's objection, the trial court appointed independent special counsel

⁵ Trial counsel indicated at a February 5, 2013 hearing that Wall wanted to plead guilty to Taft's death, but only if he would receive the death penalty for that charge and also have the charge for C.J.'s death dismissed. R/421. The State rejected the offer. R/423. Wall reiterated the same offer at a December 13, 2013 hearing, and the State again stated that the offer had been rejected. R/908-16. The offer was again addressed and rejected at a December 20, 2013 hearing. R/1144-45. At a March 6, 2014 hearing, Wall offered to plead guilty to both Taft and C.J.'s deaths in exchange for the death penalty. R/1440-44. The State was willing to accept the guilty pleas, but was concerned that this Court would not approve a negotiated plea for the death penalty. R/1443. Wall then offered to enter into a negotiated plea where he would be able to withdraw his pleas and proceed to trial in the event he was not sentenced to death. However, the State rejected this offer at a February 11, 2015 hearing. R/1897-99.

to investigate and present additional mitigation at Wall's *Spencer*⁶ hearing held on April 14, 2016 and April 15, 2016. R/3293. Wall appeared pro se at the *Spencer* hearing with standby counsel. On June 3, 2016, the trial court entered a judgment imposing a death sentence for both counts of first degree murder. R/5505-08.

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." *Wall*, 238 So. 3d at 140. Wall also filed a pro se supplemental appellate brief. This Court independently considered the voluntariness of Wall's plea and the proportionality of his death sentences. *Id.* at 144-45. This Court found that all appellate claims were meritless, Wall's plea was voluntary, and his death sentences were proportionate. *Id.* at 140-45. This Court 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. *Wall v. Florida*, 139 S. Ct. 329 (2018), *reh'g denied*, 139 S. Ct. 624 (2018).

Post-Conviction Proceedings

CCRC was appointed to represent Wall in his capital collateral post-conviction proceedings on March 15, 2018. *See* Appendix A. Wall's initial post-

⁶ *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

conviction legal team included Assistant Capital Collateral Regional Counsels: Raheela Ahmed (“Ahmed”), Maria Perinetti, and Lisa Bort (“Bort”). *See* Appendix B. On June 18, 2018, Ahmed filed a motion to withdraw from the case and substitute Assistant Capital Collateral Regional Counsel Adrienne Shepherd (“Shepherd”). *See* Appendix C.

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.” P/2-60. At an August 2, 2019 status hearing, Shepherd requested that the post-conviction court appoint two experts to evaluate Wall’s competency before any hearing was held on the motion, as CCRC was concerned that Wall was not competent to proceed. P/65-71. The post-conviction court orally denied the request and scheduled the hearing on the motion for August 23, 2019. P/71-76. On August 5, 2019, Shepherd filed a “Motion for Determination of Competency Pursuant to Florida Rule of Criminal Procedure 3.851,” again requesting that the post-conviction court appoint two experts to evaluate Wall’s competency. *See* Appendix D. The post-conviction court again denied the request in an August 14, 2019 order. *See* Appendix E. Wall was represented by Shepherd, Bort, and Assistant Capital Collateral Regional Counsel Ali Shakoor at the August 23, 2019 hearing on his motion.⁷ P/85.

⁷ Wall’s post-conviction legal team has included other attorneys. The procedural

At the hearing, Wall argued that Fla. Stat. § 27.702 (2) and Fla. Stat. § 27.711 (12) enabled the post-conviction court to hold a hearing on Wall’s request to remove Shepherd from his legal team. P/86-88. Wall argued in his pro se motion that he wanted Shepherd removed, in part, because she was not following his stated objectives for the case and had allegedly violated an order from the trial court limiting the disclosure of certain evidence. P/3-60. Wall argued at the hearing that “the statute states that the only way I can get rid of the lawyer is that they either have to have an actual conflict or I file a Section I and let the State kill me faster.” P/86. The post-conviction court denied Wall’s request for a *Nelson* hearing and proceeded to conduct a *Durocher*⁸ colloquy to determine if Wall wanted to waive his post-conviction counsel and proceedings. P/100-02. After several attempts to complete the colloquy because Wall failed to affirmatively answer the trial court’s questions, the post-conviction court finally accepted Wall’s waiver.⁹ P/270-71. The post-conviction court then issued an order on September 18, 2019, finding that Wall’s waiver was knowing, intelligent, and voluntary and also discharging CCRC. P/175-273.

CCRC timely filed a “Motion to Vacate Judgments of Conviction and

history of their involvement in Wall’s case is not relevant to the current appeal.

⁸ *Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993).

⁹ A thorough outline of Wall’s non-responsive and equivocal answers when asked if he wanted to waive is detailed further below. *See infra* pp. 24-32.

Sentences of Death Pursuant to Florida Rule of Criminal Procedure 3.851” on September 26, 2019 to ensure that the October 9, 2019 deadline for filing Wall’s state and federal post-conviction claims was met. *See* Appendix F. On October 8, 2019, the State filed a motion to strike CCRC’s Rule 3.851 motion. *See* Appendix G. On October 14, 2019, Wall also filed a pro se motion to strike the Rule 3.851 motion. *See* Appendix H. On October 17, 2019, the post-conviction court issued an order granting the State’s motion and striking CCRC’s Rule 3.851 motion. *See* Appendix I.

CCRC timely filed a notice with this Court seeking review of Wall’s waiver on September 27, 2019. CCRC also timely filed a notice of appeal of the post-conviction court’s order striking CCRC’s Rule 3.851 motion on October 23, 2019. *See* Appendix J. CCRC is contemporaneously filing a “Motion to Consolidate” with this initial brief, requesting that this Court consider CCRC’s appeals of both the post-conviction court’s September 18, 2019 and October 17, 2019 orders, as both appeals present interrelated issues. This appeal follows.

SUMMARY OF THE ARGUMENTS

The post-conviction court abused its discretion in its September 18, 2019 and October 17, 2019 orders when it granted Wall’s waiver of post-conviction counsel and proceedings and then subsequently struck CCRC’s Rule 3.851 motion before this Court determined the validity of Wall’s waiver.

The post-conviction court abused its discretion when it failed to order that Wall's competency be evaluated before rendering a final decision on Wall's waiver and further abused its discretion when it ruled that Wall was competent to waive. This Court must reverse the waiver, as Wall was not competent to proceed when it was made and lacked the capacity to understand the consequences of the waiver due to his severe mental illness.

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. CCRC requested multiple times that Wall's competency be evaluated so that the post-conviction court could be apprised of the details of how Wall's severe mental illness rendered him incompetent. *See supra* p. 10. The post-conviction court rendered itself uninformed of the details of Wall's current mental illness when it denied those requests. However, the post-conviction court was aware of the extensive history of Wall's erratic behavior during his previous proceedings and should have recognized that this behavior indicated that Wall has never been competent.¹⁰ *See infra* pp. 19-22. Instead, the post-conviction court determined that Wall was competent, in part, because his concerning behavior during the August 23, 2019 waiver hearing

¹⁰ Judge Philip Federico presided at the August 23, 2019 hearing and issued both the September 18, 2019 and October 17, 2019 order. Judge Federico also presided at the majority of Wall's pretrial hearings, Wall's penalty phase, and his *Spencer* hearing.

mirrored previous interactions the court had with Wall. *See infra* p. 18. This was not a valid reason to determine Wall was competent when his behavior and mental health history indicate otherwise. Further, Wall was not competent to waive because he indicated during the *Durocher* colloquy that he did not understand the effect that waiving his post-conviction counsel and proceedings would have on his ability to raise federal post-conviction claims. *See infra* pp. 22-23. Despite the clear evidence that Wall could not competently decide to waive, the post-conviction court still accepted his waiver.

The post-conviction court further abused its discretion when it found that Wall's waiver of his post-conviction counsel and proceedings was knowing, intelligent, and voluntary in its September 18, 2019 order. This Court must reverse the waiver, as it was not knowing, intelligent, and voluntary because Wall did not make an unequivocal request to dismiss his counsel and proceedings and was not fully aware of the potential post-conviction claims he was waiving.

Wall indicated at the hearing that he did not want to waive his counsel and proceedings, but instead wanted them to continue as long as Shepherd was removed from his legal team. *See infra* pp. 25-26. Even when the post-conviction court denied Wall's request for a *Nelson* hearing and refused to remove Shepherd, Wall still indicated that he did not want to waive by constantly complaining that Shepherd was not following his objectives for his case. *See infra* p. 26. Wall explicitly stated that

he did not want to fire his entire legal team. *See infra* p. 26. Wall's complaints indicated that he did not want to waive, but instead wanted to continue with his counsel and proceedings, albeit with a different attorney.

Wall's non-responsive and equivocal answers during the *Durocher* colloquy further prove that his waiver was not knowing, intelligent, and voluntary. Wall consistently failed to answer in the affirmative when the post-conviction court inquired of him during the colloquy. *See infra* pp. 27-31. Instead, Wall answered with long, non-responsive tangents complaining about Shepherd's alleged misconduct, voicing disagreement with the procedure for appealing the waiver, and reiterating that he wanted his suggested plea deal. *See infra* pp. 27-31. The post-conviction court failed to recognize that Wall's non-responsive answers indicated that his waiver was not unequivocal. If Wall's waiver was truly voluntary, he would have affirmatively answered that he wanted to waive instead of distracting the court with long, convoluted responses. Further, Wall's waiver cannot be deemed knowing and intelligent because he was not fully aware of the post-conviction claims he was waiving since CCRC had not yet filed a Rule 3.851 motion for post-conviction relief. *See infra* pp. 32-33. Despite the overwhelming evidence at the hearing that Wall's waiver of post-conviction counsel and proceedings was not knowing, intelligent, and voluntary, the post-conviction court still accepted Wall's waiver.

The post-conviction court further abused its discretion when it prematurely

struck CCRC's Rule 3.851 motion for post-conviction relief before this Court could determine the validity of Wall's waiver of his post-conviction counsel and proceedings. This Court must reverse the post-conviction court's order, as striking the Rule 3.851 motion was premature based upon this Court's pending review of Wall's waiver. Fla. R. Crim. P. 3.851(i)(8)(B) mandates that CCRC file this automatic appeal of Wall's waiver, indicating that Wall's waiver of counsel and proceedings is not final until this Court rules on its validity. *See infra* pp. 33-34. Accordingly, the post-conviction court prematurely struck the motion as this Court has not yet decided this current appeal.

For the aforementioned reasons, this Court must reverse the post-conviction court's September 18, 2019 and October 17, 2019 orders, reinstate Wall's post-conviction proceedings, and reappoint CCRC to represent Wall in those proceedings.

STANDARD OF REVIEW

The standard of review for a lower court's order finding a waiver of post-conviction counsel and proceedings was knowing, intelligent, and voluntary is abuse of discretion. *Trease v. State*, 41 So. 3d 119, 124 (Fla. 2010) (internal citation omitted). The standard of review for a lower court's ruling regarding competency to waive is also abuse of discretion. *Id.* The standard of review for orders striking all or part of a party's pleadings is whether the lower court abused its discretion. *Neal v. Neal*, 636 So. 2d 810, 812 (Fla. 1st DCA 1994) (internal citation omitted).

ARGUMENT I

The post-conviction court abused its discretion when it failed to order that Wall’s competency be evaluated before rendering a final decision on Wall’s waiver and further abused its discretion when it ruled that Wall was competent to waive.

The trial court abused its discretion when it failed to order that Wall’s competency be evaluated before rendering a final decision on Wall’s waiver and further abused its discretion when it ruled that Wall was competent to waive. This Court must reverse the waiver, as Wall was not competent to proceed when it was made and lacked the capacity to understand the consequences of the waiver due to his severe mental illness.

When determining competency to proceed, 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). The relevant test for competency in the context of waiving collateral counsel and proceedings is whether the defendant has the capacity to understand the consequences of the waiver. *Slawson v. State*, 796 So. 2d 491, 502 (Fla. 2001). CCRC maintains that Wall has been rendered incompetent to proceed by his severe mental illness throughout his proceedings and was accordingly incompetent to proceed during the August 23, 2019 hearing on his Rule 3.851(i) motion. Further, Wall exhibited that he did not have the capacity to understand the

consequences of his waiver.

CCRC twice requested prior to the August 23, 2019 hearing that Wall be evaluated so that the post-conviction court could be apprised of the details of how Wall's severe mental illness rendered him incompetent. *See supra* pp. 10. The post-conviction court denied those requests. *See supra* p. 10. CCRC then reiterated its standing request during the August 23, 2019 hearing that Wall's competency be evaluated before the post-conviction court rendered a final decision on the waiver. P/116-24. The post-conviction court abused its discretion when it again denied the request for a competency evaluation and found that Wall was competent.¹¹ The post-conviction court indicated that the fact that Wall's behavior in the courtroom had not changed over the past eight years was proof that Wall was competent.¹² P/119. The post-conviction court stated that Wall exhibited the same affect, level of intelligence, and ability to communicate as he had previously. P/119. The post-conviction court further stated that Wall had previously been able to plead guilty and conduct his penalty phase pro se. P/119-20. The fact that Wall's behavior at the waiver hearing was similar to his previous behavior actually indicates that Wall was not competent

¹¹ *See Fla. R. Crim. P. 3.851(i)(4)* ("No fewer than 2 or more than 3 qualified experts shall be appointed to examine the defendant if the judge concludes [at the hearing] that there are reasonable grounds to believe the defendant is not mentally competent for purposes of this rule.").

¹² As discussed above, Judge Federico presided over Wall's post-conviction and trial proceedings. *See supra* n. 10.

at the waiver hearing because Wall was not competent during his previous proceedings, including when he entered his pleas and conducted his penalty phase and *Spencer* hearings pro se.

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 post-conviction court rendered itself purposely uninformed of the current details of Wall’s severe mental illness because it refused to appoint two experts to evaluate Wall’s competency. However, the post-conviction court was present for and aware of the extensive history of Wall’s previous erratic behavior, including multiple instances where the trial court had to remove Wall from the courtroom.

Despite the trial 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 trial 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.

R/607-08. At a May 1, 2013 pre-trial hearing, Wall interrupted the trial court and counsel's discussion concerning a subpoena duces tecum to demand that one of his attorneys be removed from his case for allegedly protecting someone who violated Wall's HIPAA and attorney-client privilege rights. R/626-30. While discussing the issue, Wall continued to interrupt the trial 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 trial 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 trial court then removed Wall from the courtroom. R/1168.

On the first day of Wall's *Spencer* hearing, the trial court rescinded Wall's pro se status, removed Wall from the courtroom, and reappointed trial counsel after Wall made threats concerning a knife. R/4904-06. 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 trial 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 trial court removed Wall from the courtroom and reappointed trial counsel. R/4904-06. Before removing Wall, the trial 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. The trial court was clearly aware of Wall’s concerning behavior throughout both his trial and post-conviction proceedings, and abused its discretion when it refused to have Wall’s competency evaluated before allowing Wall to waive his post-conviction counsel and proceedings.

Further, Wall’s erratic behavior reflected in the record is not the only indication of Wall’s incompetency. The record also reflects that Wall was incapable of assisting in his own defense because his severe mental illness prevented him from discussing relevant facts with his attorneys. *See Fla. R. Crim. P. 3.211(a)(2)*. 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. 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 actions clearly indicated 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. The trial court conducted multiple *Nelson* hearings on Wall’s requests to dismiss his trial attorneys, and would have been aware of these ongoing issues. In post-conviction, Wall further indicated his continued inability to assist in his defense when he argued during the waiver hearing that Shepherd must be fired from his legal team because she failed to follow every aspect of his “objectives.” *See infra* pp. 25-26.

Further, Wall was incompetent to waive his post-conviction counsel and proceedings because he did not have the capacity to understand the consequences of his waiver. *See Slawson*, 796 So. 2d at 502. During the waiver hearing, Wall

expressed that he misunderstood the effect that waiving counsel would have on his ability to raise federal post-conviction claims. At the hearing, Shepherd apprised Wall and the post-conviction court that the deadline to file Wall's motion for post-conviction relief pursuant to Fla. R. Crim. P. 3.851 was October 8, 2019¹³, and Wall's state and federal post-conviction claims would be forfeited if the Rule 3.851 motion was not filed by that date. P/162-64. Wall later stated that the filing of his pro se Rule 3.851(i) motion tolled the time for his federal claims. P/169. Shepherd tried to explain to Wall that his Rule 3.851(i) motion likely didn't initiate equitable tolling, but Wall responded that the motion would toll his federal time. P/170-71.

Wall incorrectly assumed that the July 16, 2019 filing of his Rule 3.851(i) motion would toll his time for filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* 28 U.S.C. § 2244(d). Despite Shepherd's attempt to explain that Wall's pro se motion under Rule 3.851(i) likely would not trigger equitable tolling, Wall insisted that it would toll his federal time, highlighting the fact that he did not comprehend that he would forfeit all post-conviction claims if a proper motion for post-conviction relief was not filed by the correct deadline. It is clear that Wall did not fully comprehend the consequences of his waiver.

¹³ The actual deadline for Wall's Rule 3.851 motion was October 9, 2019.

ARGUMENT II

The post-conviction court abused its discretion when it found that Wall's waiver of his post-conviction counsel and proceedings was knowing, intelligent, and voluntary in its September 18, 2019 order.

The post-conviction court further abused its discretion when it found that Wall's waiver of his post-conviction counsel and proceedings was knowing, intelligent, and voluntary in its September 18, 2019 order. This Court must reverse the waiver, as it was not knowing, intelligent, and voluntary because Wall did not make an unequivocal request to dismiss his counsel and proceedings and was not fully aware of the potential post-conviction claims he was waiving.

This Court stated in *Durocher v. Singletary* that “the state has an obligation to assure that the waiver of collateral counsel is knowing, intelligent, and voluntary. Accordingly, we direct the trial judge forthwith to conduct a *Faretta*-type evaluation of [the defendant] to determine if he understands the consequences of waiving collateral counsel and proceedings.” 623 So. 2d 482, 485 (Fla. 1993). Wall's waiver was not knowing, intelligent, and voluntary because he did not make it unequivocally. *See Tennis v. State*, 997 So. 2d 375, 378 (Fla. 2008) (“Before the trial court can make a decision whether to permit the defendant to proceed pro se, the defendant's request for self-representation must be unequivocal.”); *see also Rose v. State*, 249 So. 3d 547, 552 (Fla. 2018) (“[T]his Court cannot abdicate its duty in ensuring that the waiver is in fact unequivocal.”) (Pariente, J., dissenting). The

record reflects that Wall's waiver was not unequivocal because it was conditioned on the trial court's denial of his request to remove Shepherd, and Wall's non-responsive answers during the *Durocher* colloquy further indicated that he did not want to waive.

Wall indicated at the hearing that he did not want to waive his counsel and proceedings, but instead wanted them to continue as long as Shepherd was removed from his legal team. When the post-conviction court questioned whether Wall was entitled to a *Nelson* hearing, the following exchange occurred:

Wall: We already have misconduct. That's proven on the face of the record. I don't even have to prove that she did that. She violated the court order. She violated my directive. She violated Florida Bar rules. ***I want – I want her removed. If I can't have her removed, then you're forcing me to make you kill me faster,*** which we – you would say – your argument would be, Well, that's what you want, Mr. Wall. Well, I wouldn't be sitting here right now if you didn't manipulate our last proceedings and said that my – my plea deal with the state attorney that was a negotiated plea for death was not death.

Court: Okay.

Wall: And you tap-danced around that. And the Florida Supreme Court --

Court: Let's try to focus on what we're doing here today.

Wall: My point is that I have two choices. I have to go through every single proceeding with this woman. Okay? Every one of them ...

Because Section (b) (2) says the only way I can get rid of her is to let the State kill me and dismiss all of them or she has to represent my codefendant or snitch in my case. That's the only

two ways I can get rid of her.

P/186-88 (emphasis added). When the post-conviction court later stated “You’re alleging that you don’t want them to be your lawyer at the same time,” Wall responded “I didn’t say that. I didn’t say that ... All I said was one person ... ***I didn’t say fire all of them. I said one.***” P/192-93 (emphasis added). When the post-conviction court later suggested that Wall could still attempt to work with CCRC, Wall responded “I tried that for ten months, your Honor. Do you understand that? I went and asked and they – ***I told her multiple times if you do not follow or at least try to follow my objectives, this is what I’m going to do. I’m going to, basically, tell the State to kill me faster ...***” P/243-44 (emphasis added). The post-conviction court then stated that Wall wanted to fire his lawyers and handle the case himself if possible. P/245 Wall responded “***No. I would take the counsel that’s there with her gone.***” P/245 (emphasis added).

Wall clearly indicated that he wanted to keep counsel and continue with his post-conviction proceedings, but only if he could fire Shepherd from his legal team. Even after the post-conviction court refused to remove Shepherd, Wall still indicated that he wanted to continue with his proceedings by complaining that Shepherd was not following his objectives for his case. If anything, Wall’s continuous complaints during the hearing that his objectives were not being followed indicated that he wanted to continue with his post-conviction proceedings, albeit with a different

attorney.

Wall's non-responsive and equivocal answers during the *Durocher* colloquy further prove that his waiver was not knowing, intelligent, and voluntary. The post-conviction court acknowledged in its order granting the waiver that Wall repeatedly interrupted with unrelated tangents when the trial court attempted to begin the colloquy. P/177. The post-conviction court described Wall's behavior as consistent with his behavior at previous pre-trial proceedings. P/177. The post-conviction court is correct that Wall consistently interrupted the trial court during his previous proceedings. *See supra* pp. 19-21. However, the post-conviction court failed to realize that Wall's non-responsive and equivocal responses throughout the August 23, 2019 hearing indicated that he did not want to waive.

Wall consistently failed to answer in the affirmative when the post-conviction court inquired of him during the colloquy. Instead, Wall answered with long, non-responsive tangents complaining about Shepherd's alleged misconduct, voicing disagreement with the procedure for appealing the waiver, and reiterating that he wanted his suggested plea deal. When the post-conviction court attempted to begin the colloquy by asking if Wall wished to dismiss his post-conviction counsel and proceedings, the following exchange occurred¹⁴:

¹⁴ Portions of the exchange between Wall and the post-conviction court are reproduced here. The complete exchange was much longer and can be found at pages 203-210 of the record on appeal for Wall's waiver.

Wall: I have a question first.

Court: Why am I not surprised? Go ahead.

Wall: Because I'm a legal scholar, man. I like to learn stuff about the law.

Court: Okay.

Wall: You know me.

Court: All right.

Wall: You said yourself I'm probably one of the most intelligent defendants you've had in your court, right? Okay.

Court: You don't hear me arguing on that point do you?

Wall: Let me – let me ask you, if I don't even to get to all the stuff I have here constitutional wise and try to set it up for – to get these rights for other inmates – because I'm not really concerned with myself. I'm concerned for the other people that are being denied their constitutional rights that may want them, right? You know what I mean? I just want to be heard; you know what I'm saying?

Court: You've made a record as to those things. You think you're entitled to have them booted. I didn't boot them. We didn't have a hearing on the merits. If I'm wrong, there's plenty of a record there to deal with that whole issue ...

Wall: This is my question. It's the same as ...

when [the State] was saying the other rule and I said does that not sound the same, the way it's set up like you're splitting hair when you know you're wrong and you're trying to justify you're wrong, and this and that – let me ask you this about this, your Honor. If I dismiss them, right – and just correct me if I'm wrong. If I was rich, we wouldn't be going through this if I was rich. If I had money, I'd have my own attorneys. They'd be following my objectives. I would have got the death sentence. I would've

had the plea agreement. I'd probably be executed already.

Court: That would –

Wall: But I didn't. I'm – I'm – I'm compelled like under Stalinist Russia to be State, State, and State. This is all State. There is nobody here representing my interest. Nobody. So if I fire them, right, as this says, right, and I dismiss my post-conviction proceedings, right, explain to me how they file an appeal to the – to the Florida Supreme Court and continue this façade although they're fired and they don't represent me. But they're still filing something on my behalf. That's not insanity to you people? ...

Court: The Supreme Court still gotta [sic] review it.

Wall: Because they're retarded. That's why.

Court: Well, I mean, that's your –

Wall: They're retarded. Why do you need to review something when I said I'm done? You don't understand your Honor. It's not common sense. We don't use common sense in the justice system anymore? If I say they're dismissed, why are they filing an appeal? They no longer represent me or anybody else ...

You have a bowl of water up there like Pontius Pilate and you're doing this right here. I did everything I could to save his life before we killed him, y'all. I – they still wanted him dead. Oh, my God, we're going through 50 processes. I'm washing my hands with the blood off of Jesus. That's what ya'll are doing. You're sitting there constantly trying to wash your hands in the murder that you're doing, and you're justifying it by saying we did all this extra stuff even though he didn't want us to. You saying that sounds like what the forefathers had in mind for this judicial system? ...

Court: All right. Well, I have to make sure that you understand it and that you understand you're dismissing counsel and you're giving up all your post-conviction proceeding –

Wall: And I'm telling you to kill me faster. Yes, I understand.

P/203-10. The post-conviction court then asked Wall if he understood that he would be waiving his proceedings permanently and was forfeiting his rights to complain about anything that happened during his guilt or penalty phase. P/211. The following exchange occurred:

Wall: Do you think I understand it?

Court: I've got to make a –

Wall: We've been dealing with this for nine years now. Do you think I [do] not understand the law?

Court: I – well, I think – what I think doesn't really matter. I've got to make a record. I've got to make sure that you've said, yes, you understand what you're giving up.

Wall: When the crypt keeper was up there – what's his name? Luce? When the crypt keeper was on the bench, we wouldn't be having this conversation ...

We're having this – you like to play these, you know, cerebral games and shit like you did with my plea deal. I understand you have to go through the process, and I'm fine with that ...

Court: Then you know I've got to ask you these questions. You're not – there's nothing – you're not coming back. Once it's gone, it's gone. That's it. We're done with the --

Wall: Do [you] think I [do] not – do you think I know that?

Court: I've got to make sure that you understand that.

Wall: Look at me, your Honor. Do you think I want to die?

Court: I – Mr. Wall –

Wall: Hold up. Hold up. I don't want to die, right? Have we not had this conversation before? The logic is not I want to die. These people have a right to their child like I had a right to mine. There's no reason that I should deny them the justice they deserve, right? ...

[M]y issue is it's all the B.S. involved to get there. You know what I mean? Technically, to me, this is cruel and unusual punishment under the constitution. They used to execute you immediately. You know what I'm saying? I have to wait years and wait and wait and sit in a cell and wait and wait. When are they gonna kill me? Are they gonna kill me?

Kind of like what I went through when I was a child. Am I gonna get beat today or am I not gonna get beat today? How is she gonna beat me? You don't want to live like that, trust me. You know what I'm saying? And that's – that's how I live.

And I gotta play these games with these people that I don't want, or if I do want, I just want my plea deal that I've tried to do, right, in my mind, right? If I can't get that and change the system so that the next person can get executed faster or get their rights to that execution, then I just – I'm fine with dying. You know what I'm saying?

Court: All right. Then you know I've got to ask you these questions and you've got to answer them right?

Wall: Yes, sir.

P/112-15. At this point, Shepherd argued that Wall had hesitated to answer the post-conviction court's colloquy questions so far, indicating that Wall's potential waiver was not unequivocal and therefore not knowing, intelligent, and voluntary. P/215-23. The post-conviction court responded that it had not yet completed the colloquy due to Wall not answering and Shepherd's objections and continued to inquire.

P/223.

At the conclusion of the colloquy, the post-conviction court again asked Wall if he wished to dismiss his post-conviction counsel and proceedings. P/270. Wall responded “Deal or no deal. You sure you want that briefcase, sir? Yeah, I want the brief – *I don’t want the briefcase, but open it anyway.* Yes, I – I – this is what I want to do sir.” P/270 (emphasis added).¹⁵ The fact that Wall eventually answered in the affirmative when asked if he wanted to waive does not necessarily mean that his waiver was knowing, intelligent and voluntary. Wall’s final response came after a lengthy back and forth where the post-conviction court had to remind Wall that he needed to answer the colloquy questions directly and stay on topic. Further, Wall’s final response during the colloquy did not indicate a complete acquiescence to the waiver. Wall indicated that his waiver was involuntary when he stated “... I don’t want the briefcase, but open it anyway.” P/270. It is clear from the totality of Wall’s colloquy responses and his final equivocal answer that he did not want to waive, but instead wanted to continue his proceedings if Shepherd was dismissed from his legal team.¹⁶

¹⁵ Wall indicated at other points during the colloquy that he wanted to dismiss his counsel. P/255, 259. He also indicated earlier that he wanted to waive his proceedings. P/247.

¹⁶ CCRC is not arguing that Shepherd should be dismissed from Wall’s legal team. However, Wall’s request that she be removed *or* he dismiss his proceedings indicates that Wall intended to proceed, but wanted to do so with a different attorney.

Further, the post-conviction court also acknowledged during the hearing that Wall could not be completely aware of the claims he was waiving since CCRC had not yet filed a Rule 3.851 motion for post-conviction relief in the case.¹⁷ P/263. Accordingly, Wall's waiver could not be knowing and intelligent if he was unaware of the potential claims he was forfeiting when he waived.

ARGUMENT III

The post-conviction court abused its discretion when it granted the State's motion to strike CCRC's "Motion to Vacate Judgments of Conviction and Sentences of Death Pursuant to Florida Rule of Criminal Procedure 3.851" in its October 17, 2019 order.

The post-conviction court further abused its discretion when it prematurely struck CCRC's Rule 3.851 motion for post-conviction relief before this Court could determine the validity of Wall's waiver of his post-conviction counsel and proceedings. This Court must reverse the post-conviction court's order, as striking the Rule 3.851 motion was premature based upon this Court's pending review of Wall's waiver.

CCRC filed the Rule 3.851 motion to ensure that the deadline for filing Wall's post-conviction claims was met, as Wall's deadline would not have been properly preserved if CCRC failed to timely file the motion and this Court subsequently

¹⁷ CCRC eventually filed a Rule 3.851 motion for post-conviction relief on September 26, 2019, after Wall's oral waiver at the August 23, 2019 hearing. *See supra* p. 12.

reversed Wall's waiver. CCRC requested in the Rule 3.851 motion that the post-conviction court reserve ruling on the motion pending this Court's disposition of this current appeal. *See* Appendix F. The post-conviction court stated in its September 18, 2019 order that CCRC was "hereby discharged from representation in [Wall's case] except as required by Rule 3.851(i)(8)(B)." P/179. Fla. R. Crim. P. 3.851(i)(8)(B) mandates that CCRC file this automatic appeal of Wall's waiver, indicating that Wall's waiver of counsel and proceedings is not final until this Court rules on its validity.

CCRC has requested in its contemporaneous "Motion to Consolidate" that this Court consider both the issue of the validity of Wall's waiver and the issue of the post-conviction court's October 17, 2019 order striking CCRC's Rule 3.851 motion. These two issues are necessarily intertwined. If this Court upholds Wall's waiver, then CCRC's appeal of the post-conviction court's order striking the Rule 3.851 motion is moot. However, if this Court finds that Wall's waiver was not valid, then Wall's deadline would be properly preserved by the Rule 3.851 motion, and he could seek leave to amend his state post-conviction claims if necessary. The post-conviction court's order striking CCRC's motion was premature, as this current appeal of Wall's waiver had not yet been decided.

CONCLUSION

The post-conviction court abused its discretion when it: found Wall was competent to waive his post-conviction counsel and proceedings; found that Wall's waiver was knowing, intelligent, and voluntary, and subsequently granted Wall's waiver; and prematurely struck CCRC's Rule 3.851 motion for post-conviction relief. As Wall was not competent and his waiver was not knowing, intelligent, and voluntary, this Court must reverse the waiver, reinstate Wall's post-conviction proceedings, and reappoint CCRC to represent Wall in those proceedings. Further, this Court must reverse the post-conviction court's order striking CCRC's Rule 3.851 motion as it was premature.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Fla. R. App. P. 9.210, that the foregoing document was generated in Times New Roman fourteen-point font.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the PDF copy of the foregoing document has been transmitted to this Court through the Florida Courts E-Filing Portal on this 29th day of October, 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 **Marilyn Muir Beccue**, Assistant Attorney General, Office of the Attorney General, at marilyn.beccue@myfloridalegal.com and capapp@myfloridalegal.com, on this 29th day of October, 2019.

I HEREBY FURTHER CERTIFY that a copy of the foregoing has been sent via U.S. mail to **Mr. Craig Wall, Sr.**, DOC# 140726, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 on this 29th day of October, 2019.

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