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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

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

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PRELIMINARY STATEMENT

Capital Collateral Regional Counsel ("CCRC"), on behalf of Appellant Craig Alan Wall, Sr., ("Wall"), relies on the arguments presented in the October 29, 2019 Initial Brief of the Appellant Pursuant to Florida Rule of Criminal Procedure 3.851(i)(8)(B) ("Initial Brief"). CCRC offers the following reply to the November 15, 2019 Answer Brief of Appellee ("Answer Brief"), filed by the Attorney General's Office. CCRC will also address statements made in Wall's pro se brief ("Pro Se Brief"), which was received by CCRC on January 24, 2020. While CCRC will not reply to every issue and argument raised in the briefs, CCRC expressly does not abandon the issues not specifically replied to herein.

The record on appeal for Wall's waiver of his post-conviction counsel and proceedings will be cited as "P/[page number]." The Initial Brief will be cited as "IB/[page number]." The Answer Brief will be cited as "AB/[page number]." The Pro Se Brief will be cited as "PSB/[page number]." All other references will be self-explanatory or otherwise explained.

ARGUMENT AND CITATIONS OF AUTHORITY

REPLY TO THE ANSWER BRIEF - ARGUMENT I

Appellee argues that the post-conviction court did not abuse its discretion when failing to order a competency evaluation prior to rendering a final decision on Wall's waiver. AB/11-13. Appellee argues in support that: the post-conviction court was familiar with Wall's consistent courtroom behavior for several years; a presumption of competence attached to the previous determination that Wall was competent; and Wall's mental illness does not equate to incompetence. AB/11-13.

Appellee cites to various statements the post-conviction court made during the August 23, 2019 hearing ("waiver hearing") to support the decision not to order an evaluation. The court stated that Wall's courtroom behavior had not changed for the past eight years. AB/11-12; P/119. The court further stated that Wall exhibited the same affect, level of intelligence, and ability to communicate as he had previously. AB/11-12; P/119. Both Appellee and the post-conviction court fail to recognize that Wall's consistently erratic behavior actually indicates that he was incompetent to enter his plea and self-represent during his trial proceedings and was subsequently incompetent to waive his post-conviction counsel and proceedings during the waiver hearing. CCRC argued at the waiver hearing and in the Initial Brief that Wall has never been competent to proceed or self-represent. IB/18-21; P/120-21. 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); *see also* IB/18. The record of Wall's trial proceedings reflects that he was incapable of both assisting in his own defense and manifesting appropriate courtroom behavior. IB/19-22. The fact that Wall continued his pattern of inappropriate behavior during the waiver hearing does not indicate that he was competent to waive. CCRC apprised the post-conviction court that a mental-health expert had preliminarily opined that Wall suffers from a severe mental illness, and the court rendered itself purposely uninformed of the current details of that illness when it refused to appoint two experts to evaluate Wall's competency. IB/19.

Appellee cites to the post-conviction court's statement that Wall had previously been found competent to plead guilty and waive trial counsel and argues that "[a] presumption of competence attaches from a previous judicial determination of competency." AB/12; P/119-20. Appellee correctly asserts that the presumption of Wall's competence following his previous evaluation continues throughout his subsequent proceedings. *See Wall v. State*, 238 So. 3d 127, 140-41 (Fla. 2018). However, mental competence is not a fixed or finite state, and Wall's mental state certainly could have transitioned to incompetency since he was last evaluated.[1] The

[1] It is CCRC's position that the record on appeal and other evidence indicates that Wall has never been competent to proceed or self-represent. However, assuming that Dr. Jill Poorman correctly found that Wall was competent during her 2013 court-

post-conviction court had an ongoing duty to be alert to circumstances suggesting a change in Wall's competency, and the court erred when it failed to meet that duty. *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 post-conviction court declined to order a competency evaluation, in part, because Wall's behavior during the waiver hearing remained consistent with previous courtroom interactions. P/119-20. However, CCRC had recently apprised the court of new information indicating that Wall's mental state could have changed. CCRC informed the post-conviction court at an August 2, 2019 status hearing that a mental-health expert had recently opined that Wall suffered from a mental illness rendering him incompetent. P/69. CCRC further informed the court that the relationship between CCRC and Wall had declined to the point where Wall had cutoff communication despite CCRC's efforts, but CCRC defense team members had previously witnessed Wall exhibit very erratic behavior during a recent prison visit. P/69-70. The post-conviction court was aware of these evolving circumstances during the subsequent waiver hearing, and still failed to

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appointed evaluation, Wall was later rendered incompetent by severe mental illness during his 2019 waiver hearing.

order Wall be evaluated so that experts could determine the full extent of the changes to his mental state.

Appellee cites to *Silvia v. State*, 228 So. 3d 1144 (Fla. 2013) to argue that "[m]ental illness does not equate to incompetence." AB/13. It is certainly true that the presence of mental illness does not automatically mean a defendant is incompetent. However, a defendant can be rendered incompetent by the symptoms of his mental illness, and Wall is certainly rendered incompetent by the symptoms of his illness. Further, this Court's decision in *Silvia v. State* is completely distinguishable from Wall's case. Silvia waived his capital collateral post-conviction counsel and proceedings, and his counsel subsequently filed the required appeal of his waiver. *Silvia*, 228 So. 3d at 1145. However, Silvia's counsel did not raise any issue concerning Silvia's competency, and actually represented to the lower court that he could not argue in good faith that Silvia was incompetent. *Id.* The lower court subsequently found that there was no reason to believe that Silvia was not mentally competent to proceed for the purpose of his waiver hearing. *Id.* On appeal, Silvia's counsel argued that he had mental health problems that would form the basis for post-conviction claims, but did not argue that the lower court erred in finding no issue with Silvia's competency. *Id.* CCRC has consistently represented in recent proceedings that good faith concern exists regarding Wall's competency based on: CCRC's interactions with Wall; a mental health expert's opinion that Wall is

currently incompetent; and evidence from the record on appeal indicating Wall was previously incompetent during his trial proceedings. Competency may not have been an issue in Silvia's case, but it is absolutely an issue in Wall's case, and the post-conviction court erred and abused its discretion when it failed to order a competency evaluation prior to rendering a final decision on Wall's waiver.

REPLY TO THE ANSWER BRIEF - ARGUMENT II

Appellee argues that the post-conviction court did not abuse its discretion when determining that Wall's waiver was knowing, intelligent, and voluntary. AB/13-16. Appellee correctly asserts that Wall engaged the post-conviction court in a "back and forth" when the court attempted to conduct the necessary *Durocher*[2] inquiry to determine if Wall's waiver was knowing, intelligent, and voluntary. AB/16. Appellee argues that Wall conformed to his typical behavior when he "engaged the court in a conversation about his actions, his willingness to accept death as a punishment, and his experience in the Department of Corrections." AB/16. Appellee further asserts that Wall's "loquaciousness" during the hearing does not indicate that he was incompetent. AB/16.

Wall certainly has a history of interrupting courtroom proceedings to discuss unrelated issues. However, Wall's equivocal and non-affirmative answers during the *Durocher* inquiry indicated that his waiver was not knowing, intelligent, and

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

voluntary. IB/24; *See Rose v. State*, 249 So. 3d 547, 552 (Fla. 2018) ("[The Florida Supreme Court] cannot abdicate its duty in ensuring that the waiver [of capital collateral post-conviction counsel and proceedings] is in fact unequivocal.") (Pariente, J., dissenting). The fact that Wall conformed to his typical courtroom behavior during the waiver hearing does not indicate that his waiver was voluntary. Wall actually indicated that he did not want to waive his post-conviction counsel and proceedings, but instead wanted to continue as long as Assistant CCRC Adrienne Shepherd was removed from his defense team.[3] IB/25-26; P/186-88, 192-93, 243-45.

Further, Wall consistently failed to answer affirmatively when the post-conviction court asked Wall if he wanted to waive his post-conviction counsel and proceedings. IB/27-31; P/203-15. Wall instead responded with unrelated tangents in an apparent attempt to stall the hearing and his eventual equivocal waiver. IB/27-32; P/203-15, 270. Appellee argues that Wall ultimately stated that he understood his decision and wanted to waive. AB/16. 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

[3] As stated in the Initial Brief, CCRC is not arguing that Assistant CCRC Adrienne 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 on his team. IB/32 at n. 16.

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 equivocal response during the colloquy did not indicate a complete acquiescence to the waiver, but rather indicated that he was making an involuntary decision. IB/32; P/270. The post-conviction court erred and abused its discretion when it found that Wall's waiver was knowing, intelligent, and voluntary.

REPLY TO THE ANSWER BRIEF - ARGUMENT III

Appellee argues that this Court should not consider CCRC's appeal of the post-conviction court's October 17, 2019 order striking CCRC's September 26, 2019 Fla. R. Crim. P. 3.851 motion. AB/17-18. In support, Appellee argues that CCRC did not represent Wall when the pleading was filed. AB/17-18. Appellee further argues that the post-conviction court did not abuse its discretion in striking the motion because CCRC was discharged from representing Wall prior to CCRC filing the Rule 3.851 motion. AB/18.

CCRC's pending appeal of the post-conviction court's October 17, 2019 order is assigned Florida Supreme Court Case No.: SC19-1838. This Court has not yet issued a briefing schedule for that appeal. Preliminarily, the issue of the post-conviction court's order striking CCRC's Rule 3.851 motion is properly before this Court. Fla. R. Crim. P. 3.851(i)(8)(B) mandates that CCRC file this automatic appeal of the post-conviction court's order discharging CCRC from representing Wall. As

this Court has not yet ruled on Wall's waiver, CCRC's dismissal cannot yet be considered truly final. Further, nothing in Rule 3.851(i) prevents CCRC from filing pleadings on Wall's behalf in the interim between his waiver and this Court's disposition of this appeal.

This Court may also properly consider this issue because it is necessarily intertwined with this Court's disposition of Wall's waiver. CCRC filed the Rule 3.851 motion to ensure that the October 9, 2019 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 reversed Wall's waiver. IB/34. 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. IB/34. However, if this Court finds that Wall's waiver was not valid, then Wall's deadline should be properly preserved by the Rule 3.851 motion, and he could seek leave to amend his state post-conviction claims if necessary. IB/34. CCRC's representation of Wall until this Court renders a final decision on his waiver does not prejudice any party and ensures that Wall's due process rights are preserved. Wall is a mentally ill and incompetent capital defendant facing two death sentences, and his due process right to challenge his capital convictions and sentences should not be forfeited because he made the incompetent and involuntary decision to waive prior to a Rule 3.851 motion being filed in his case. If Wall had waived after a Rule

3.851 motion was filed, he would not face the risk of losing the right to raise cognizable post-conviction claims in the event this Court reversed his waiver.

Finally, the post-conviction court's order striking the Rule 3.851 motion was premature. IB/34. 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. IB/34. Instead, the post-conviction court chose to strike the motion before this Court could render a decision on the validity and finality of Wall's waiver. The post-conviction court erred and abused its discretion when it struck CCRC's Rule 3.851 motion in its October 17, 2019 order.

REPLY TO THE PRO SE BRIEF

Wall's Pro Se Brief only serves as further evidence that he is not competent to proceed pro se and did not voluntarily waive his post-conviction counsel or proceedings. Wall's allegations exhibit a clear misapprehension of reality that is likely caused by his severe mental illness. CCRC has previously explained to Wall that Assistant CCRC Adrienne Shepherd ("Shepherd") is not the first-chair attorney on his defense team. Despite this, Wall still incorrectly asserts that Shepherd is the "First Chair" on several cases, including his own.[4] PSB/20, 27. Further, Wall unequivocally states in his Pro Se Brief that he "did not willingly chose [sic] to enact

[4] At least one attorney with the qualifications required under Fla. Stat. § 27.704 has always been present on Wall's defense team as the first-chair attorney.

Rule 3.851(i)" and requests that this Court find that he "did not "willingly" chose [sic] to dismiss all CCRC and all post-conviction appeals." PSB/40.

CONCLUSION

The post-conviction court erred and abused its discretion when it: refused to order Wall's competency be evaluated before rendering a final decision on Wall's waiver; found that Wall's waiver was knowing, intelligent, and voluntary; and prematurely struck CCRC's Rule 3.851 motion in its October 17, 2019 order. Wall is a mentally ill and incompetent capital defendant at grave risk of losing his due process right to challenge his convictions and death sentences due to the post-conviction court's errors. This Court must reverse Wall's waiver, reinstate his post-conviction counsel and proceedings, and reverse the post-conviction court's order striking the Rule 3.851 motion filed on Wall's behalf.

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 28th day of January, 2020.

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 28th day of January, 2020.

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 28th day of January, 2020.

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