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

SUPPLEMENTAL BRIEF BY CAPITAL COLLATERAL REGIONAL COUNSEL-MIDDLE REGION PURSUANT TO THE FLORIDA SUPREME COURT'S JUNE 18, 2020 ORDER

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PRELIMINARY STATEMENT

Capital Collateral Regional Counsel-Middle Region ("CCRC"), pursuant to this Court's June 18, 2020 order, submits the following Supplemental Brief addressing Appellant Craig Alan Wall, Sr.'s ("Wall") pro se "Motion to Declare Fla. R. Crim. P. 3.851 (b)(6) & (i) Unconstitutional," including whether Wall has a constitutional right to represent himself in his state post-conviction collateral proceedings to the extent that this Court should reconsider its decision in *Gordon v. State*, 75 So. 3d 200 (Fla. 2011).

The record on appeal for Wall's direct appeal will be cited as "R/[page number]."[1] The record on appeal for the current appeal of Wall's waiver of his post-conviction counsel and proceedings will be cited as "P/[page number]." The Initial Brief filed by CCRC in the current appeal will be cited as "IB/[page number]." All other references will be self-explanatory or otherwise explained.

SUMMARY OF THE ARGUMENTS

This Court should recede from *Gordon v. State*, 75 So. 3d 200 (Fla. 2011) and find that Fla. R. Crim. P. 3.851(b)(6)'s pro se prohibition is unconstitutional because it violates capital defendants' rights to access to the courts, due process, and equal protection under the Florida Constitution. This Court should further find that capital

[1] The record on appeal for Wall's direct appeal can be found in the docket for Florida Supreme Court Case No.: SC16-1221.

defendants have the right under Fla. Stat. § 27.7001 and Fla. Stat. § 27.711(12) to a hearing on their cognizable claims of ineffective assistance of post-conviction collateral counsel to ensure that capital defendants receive the quality of counsel intended by the Florida legislature and to avoid equal protection issues. Finally, while Wall has the right to proceed pro se in his post-conviction collateral proceedings under the Florida Constitution, he should not be allowed to proceed pro se in his current appeals because he likely suffers from a severe mental illness that renders him incapable of self-representation.

ARGUMENT I

This Court should recede from its previous decision in *Gordon v. State*, 75 So. 3d 200 (Fla. 2011) and find that Fla. R. Crim. P. 3.851(b)(6) is unconstitutional under the Florida Constitution.

As an initial matter, capital defendants do not have a federal constitutional right to self-representation in their post-conviction collateral proceedings, but states are not precluded from recognizing such a right under their own constitutions. The United States Supreme Court ("SCOTUS") held in *Martinez v. Court of Appeal of California, Fourth Appellate Dist.* ("*Martinez*") that criminal defendants do not have a federal constitutional right to self-representation during their direct appeals. 528 U.S. 152, 163 (2000). However, the *Martinez* court also held that states are not precluded from recognizing such a right under their own state constitutions. *Id.* at 163. Citing to *Martinez*, this Court subsequently concluded that death-sentenced

appellants in Florida do not have a state constitutional right to proceed pro se, and held that they may not appear pro se in their post-conviction collateral appeals. *See Gordon v. State*, 75 So. 3d 200, 202-03 (Fla. 2011) ("*Gordon*"). Fla. R. Crim. P. 3.851 was subsequently amended to include section (b)(6),[2] which states that

> [a] defendant who has been sentenced to death may not represent himself or herself in a capital postconviction proceeding in state court. The only bases for a defendant to seek to dismiss postconviction counsel in state court shall be pursuant to statute due to actual conflict or subdivision (i) of this rule.

Fla. R. Crim. P. 3.851(i) states, in part, that "[t]his subdivision applies only when a defendant seeks both to dismiss pending postconviction proceedings and to discharge collateral counsel." Read together, Fla. R. Crim. P. 3.851(b)(6) and (i) allow a capital defendant to dismiss his current collateral counsel for only two reasons- when an actual conflict exists or when the defendant wishes to dismiss his post-conviction proceedings entirely. Fla. R. Crim. P. 3.851(b)(6)'s pro se prohibition violates the right to access to the courts, due process, and equal protection under the Florida Constitution.[3] Accordingly, this Court should recede

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[2] *See In re Amendments to Florida Rules of Judicial Admin.; Florida Rules of Criminal Procedure; and Florida Rules of Appellate Procedure--Capital Postconviction Rules*, 148 So. 3d 1171, 1173-74 (Fla. 2014).

[3] Rule 3.851(b)(6)'s pro se prohibition also violates the federal right to due process and equal protection under the Fourteenth Amendment to the United States Constitution. Notably, SCOTUS explained in *Martinez* that "[i]n light of [the court's] conclusion that the Sixth Amendment does not apply to appellate proceedings, any individual right to self-representation on appeal based on

from *Gordon's* holding that capital defendants may not proceed pro se in their post-conviction collateral appeals and find that Fla. R. Crim. P. 3.851(b)(6) is unconstitutional.

Fla. Const. Art. I § 21 states that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Fla. Const. Art. I § 9 states, in part, that "[n]o person shall be deprived of life, liberty or property without due process of law." In practice, the combined application of Rule 3.851(b)(6) and (i) violates the right to access to the courts and due process under the Florida Constitution because the defendant is forced to waive his entire post-conviction collateral proceedings in order to dismiss his current counsel.[4] The defendant is therefore denied a full and fair appellate review of his conviction and sentence simply because he wishes to proceed pro se. This denial of due process is made even more egregious by the fact that it only affects defendants who are faced with the ultimate penalty of a death sentence.

CCRC acknowledges that both SCOTUS and this Court have articulated

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autonomy principles must be grounded in the Due Process Clause." *Id.* at 161. This brief will focus more specifically on the violation of due process and equal protection under the Florida Constitution in light of SCOTUS's holding that capital defendants do not have a federal constitutional right to proceed pro se in their collateral post-conviction proceedings. *Id.* at 163.

[4] CCRC does not take the position that Rule 3.851(i) is unconstitutional, as it merely outlines the procedure for when a capital defendant seeks to simultaneously waive his post-conviction proceedings **and** dismiss his post-conviction counsel.

compelling reasons for requiring that capital defendants have the benefit of attorney representation at all stages of their criminal proceedings. SCOTUS explained in *Martinez* that

> [n]o one, including Martinez and the *Faretta* majority, attempts to argue that as a rule *pro se* representation is wise, desirable, or efficient. Although we found in *Faretta* that the right to defend oneself at trial is "fundamental" in nature … it is clear that it is representation by counsel that is the standard, not the exception.

Id. at 161 (emphasis in original) (internal citations and footnotes omitted). This Court subsequently stated in *Gordon*:

> We recognize that "we have a constitutional responsibility to ensure the death penalty is administered in a fair, consistent and reliable manner, as well as having an administrative responsibility to work to minimize the delays inherent in the postconviction process." *Arbelaez v. Butterworth,* 738 So.2d 326, 326–27 (Fla.1999) … This responsibility arises in part from the United States Supreme Court's "insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all." *Eddings v. Oklahoma,* 455 U.S. 104, 112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982). These principles are best served in the capital postconviction appellate context when death-sentenced appellants are represented by counsel.

75 So. 3d at 202 (emphasis in original). This Court also explained that

> the complexity of postconviction proceedings, the limited nature of the resources available to death row inmates, and the fact that counsel helps to ensure the quality of the review [of the conviction and sentence] … support [the] conclusion that ***both the death-sentenced defendant and the justice system are best served by the requirement that capital defendants be represented by counsel in all postconviction appeals.***

Id. at 203 (emphasis added). CCRC agrees that both capital defendants and the justice system are best served when capital defendants are represented by counsel.

Accordingly, CCRC firmly asserts its position that the optimal situation is that capital defendants are represented by counsel at every stage of their criminal proceedings. However, CCRC also recognizes that conflicts may arise between a defendant's stated objectives and what claims counsel may ethically file, rendering pro se status necessary when it is impossible for counsel to follow the defendant's objectives or file what the defendant specifically wants. This potential conflict should not preclude the defendant from due process or the right to access the courts by filing pro se collateral appeals.

The Florida Rules of Professional Conduct state, in part, that "a lawyer must abide by a client's decisions concerning the objectives of representation." R. Regulating Fla. Bar 4-1.2. However, the same rules also state that "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous." R. Regulating Fla. Bar 4-3.1. Tension between these two rules may arise when a capital defendant directs his counsel to raise claims or arguments that counsel reasonably believes cannot be ethically raised under the professional guidelines. This tension may then cause a capital defendant to request to proceed pro se so that he may raise the desired claims himself. This potential conflict between a capital defendant's stated objectives for his case and his attorney's ability to follow those objectives under the professional rules should not preclude the capital defendant from a full and fair appellate review

of his conviction and sentence. Under these unique circumstances, the capital defendant must be allowed to proceed pro se, but only if he makes an unequivocal waiver of counsel and is also mentally capable of self-representation.

If capital defendants are allowed to pursue pro se collateral appeals, the courts must ensure that the waiver of counsel is absolutely unequivocal and also that each defendant is mentally capable of self-representation. The *Durocher*[5] inquiry currently performed by post-conviction circuit courts when capital defendants waive their counsel and proceedings under Rule 3.851(i) should satisfy the question of whether the waiver of counsel is unequivocal and also knowing, intelligent, and voluntary. The courts must also ensure that a capital defendant is not rendered incapable to proceed pro se by a severe mental illness or any other mental defect. *See Indiana v. Edwards*, 554 U.S. 164 (2008); *see also infra* pp. 16-17. To that effect, this Court should mandate that post-conviction circuit courts appoint at least two experts to examine the defendant's mental capacity to proceed pro se and subsequently enter an order setting forth findings on the matter. Fla. R. Crim. P. 3.851(i)(4) currently states that "[n]o fewer than 2 or more than 3 qualified experts shall be appointed to examine the defendant if the judge concludes that there are reasonable grounds to believe the defendant is not mentally competent for purposes

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

of this rule." This Court should mandate that a capital defendant's mental capacity is thoroughly examined to ensure that capital defendants rendered unable to proceed pro se by severe mental illness are not tasked with navigating the complex process of filing and litigating collateral appeals. Ensuring that such defendants have the continued benefit of counsel conforms with this Court's "constitutional responsibility to ensure the death penalty is administered in a fair, consistent and reliable manner." *Gordon*, 75 So. 3d at 202 (citing *Arbelaez v. Butterworth*, 738 So. 2d 326, 326–27 (Fla. 1999)).

Rule 3.851(b)(6)'s pro se prohibition further violates the right to equal protection under the Florida Constitution because it impermissibly treats similarly-situated capital defendants differently based only on whether they choose to proceed with counsel. Fla. Const. Art. I § 2 states, in part, that "[a]ll natural persons … are equal before the law." Under Rule 3.851(b)(6), capital defendants who agree to proceed with counsel are allowed to access the courts through their attorneys filing post-conviction collateral appeals. However, defendants who want to dismiss their counsel are forced to forfeit their ability to file a collateral appeal. The rule effectively treats capital defendants with attorneys and capital defendants without attorneys unequally before the law. There is no rational basis for this disparate treatment when the end result is that capital defendants without attorneys are denied due process.

SCOTUS explained in *Martinez* that the question of a capital defendant's right to self-representation at trial requires courts to balance "the government's interest in ensuring the integrity and efficiency of the trial" with "the defendant's interest in acting as his own lawyer." *Martinez*, 528 U.S. at 162. The question of whether this Court should recede from *Gordon* and find Rule 3.851(b)(6)'s pro se prohibition unconstitutional similarly requires this Court to balance the competing interests of the government and the defendant, although the interests are somewhat different in the context of capital collateral appeals. Both the government and this Court certainly have a compelling and legitimate interest in ensuring the integrity and efficiency of the capital post-conviction process. However, this interest must be balanced against the capital defendant's rights under the Florida Constitution. The balancing test must tip in favor of the capital defendant's right to due process and equal protection by allowing him to proceed pro se in his collateral appeals if he makes an unequivocal waiver of counsel and is mentally capable of self-representation. Allowing pro se collateral appeals in this context allows the defendant to obtain a full and fair appellate review of his conviction and death-sentence. Accordingly, for the reasons set forth above, this Court must recede from its previous decision in *Gordon* and find that Fla. R. Crim. P. 3.851(b)(6) is unconstitutional under the Florida Constitution.

ARGUMENT II

This Court should find that capital defendants have the right to a hearing similar to a *Nelson* hearing under Fla. Stat. § 27.7001 and Fla. Stat. § 27.711(12) if they raise cognizable claims that current post-conviction collateral counsel is providing ineffective assistance.

As discussed above, both SCOTUS and this Court have acknowledged that the optimal situation is for capital defendants to be represented by counsel. *See supra* pp. 5-6. The Florida legislature has also affirmed the importance of representation for capital defendants by codifying the right to post-conviction collateral counsel in the Florida Statutes. Fla. Stat. § 27.7001 states, in part, that

> [i]t is the intent of the Legislature … to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.

Further, Fla. Stat. § 27.703 states, in part, that

> [i]f, at any time during the representation of [the capital defendant], the capital collateral regional counsel alleges that the continued representation of that person creates an actual conflict of interest, the sentencing court shall, upon determining that an actual conflict exists, designate another regional counsel.

Additionally, Fla. Stat. § 27.711(12) states, in part, that

> [t]he court shall monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation. The court shall also receive and evaluate allegations that are made regarding the performance of assigned counsel.

Read together, the language of Fla. Stat. § 27.7001, 27.703, and 27.711(12) indicates that the Florida legislature recognized the importance of capital defendants receiving conflict-free and "quality" collateral representation. The statute provides for the replacement of counsel when an "actual conflict" exists and directs the court to evaluate allegations "regarding the performance of assigned counsel." However, the statute fails to outline a specific procedure or describe the particular means by which a capital defendant may receive replacement counsel when genuine concerns arise that current counsel may be acting ineffectively. This omission renders the statutory right to collateral counsel essentially nonexistent since there is no enumerated procedure for capital defendants in Florida to seek replacement collateral counsel when their current counsel's representation is ineffective. Justice Canady highlighted this issue in his dissent in *Gordon*, stating that

> there is one very important difference between direct appeals and postconviction appeals: a remedy is available for the ineffective assistance of appellate counsel in direct appeals, but no such remedy is available with respect to postconviction appellate counsel. Even if there is no constitutional right for a prisoner under sentence of death to proceed pro se in a postconviction appellate proceeding, I conclude that it is an unwise and unfair policy to saddle such a litigant with counsel against his wishes—particularly when the litigant is without any meaningful remedy for the ineffective assistance of counsel.

Gordon, 75 So. 3d at 203 (Canady, J., dissenting). To ensure that capital defendants receive the "quality representation" that the Florida legislature intended, this Court should mandate that the post-conviction circuit court hold a hearing, similar to the

Nelson[6] hearings held at the trial level, in the event that a capital defendant raises legitimate concerns that his post-conviction collateral counsel is acting ineffectively. The circuit court may then appoint replacement counsel if the court finds that current counsel's representation is ineffective. Establishing the right to a hearing addressing collateral counsel's alleged ineffectiveness ensures that capital defendants are not forced to elect to waive their counsel and proceed pro se when they are faced with ineffective counsel, or worse yet, under the current rules, waive all their post-conviction collateral appeals.

Further, failing to establish a concrete and required procedure for addressing the alleged ineffectiveness of post-conviction collateral counsel may result in an equal protection issue among similarly situated capital defendants. Wall requested that the post-conviction circuit court conduct a hearing, similar to a *Nelson* hearing, pursuant to Fla. Stat. § 27.711(12) to address the alleged ineffectiveness of his collateral counsel. P/14-15, 86-87. The circuit court denied the request, in part, because the statute does not provide for holding such a hearing and stated that Wall was "not entitled under that statute number to a Nelson hearing." P/89-90. Although Wall stated on the record that he did not wish to waive his post-conviction counsel or proceedings and instead wanted to address the alleged ineffectiveness of his

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

current counsel, the circuit court only conducted a *Durocher* inquiry and found that Wall had voluntarily waived both his counsel and proceedings. In contrast, records indicate that the post-conviction circuit court in capital defendant Richard England's ("England") case granted a hearing pursuant to Fla. Stat. § 27.711(12) after England filed a motion alleging that his current collateral counsel had rendered ineffective assistance. *See* Appendix A. After hearing testimony from the parties, the circuit court rendered an order finding that England's allegations of ineffective assistance of counsel were without merit and denying England's request for new counsel. *See* Appendix A.

Similarly, records indicate that the post-conviction circuit court in capital defendant Terance Valentine's ("Valentine") case held a hearing similar to a *Nelson* hearing on Valentine's pro se motion to discharge his collateral counsel and to appoint replacement counsel.[7] *See* Appendix B. Although the circuit court did not find that Valentine's current collateral counsel was ineffective, the circuit court entered an order after the hearing discharging Valentine's current collateral counsel and appointing replacement counsel. *See* Appendix C. This Court subsequently denied a petition filed by the State requesting that this Court vacate the circuit court's order appointing replacement counsel. *See* Appendix D and Appendix E. The

[7] The transcript of the hearing, provided in Appendix B, indicates that the circuit court heard testimony concerning Valentine's allegations of current collateral counsel's ineffectiveness.

disparate treatment of these similarly situated capital defendants proves that this Court must find that capital defendants have a right to a hearing on their cognizable claims of ineffective assistance of collateral counsel to ensure that this equal protection issue does not arise in future cases.

If this Court finds that capital defendants are entitled to a hearing similar to a *Nelson* hearing to address their claims of ineffective assistance of collateral counsel, CCRC respectfully submits that this Court could follow SCOTUS's guidance in *Martel v. Clair*, 565 U.S. 648 (2012) ("*Martel*") as to the appropriate standard for determining if current collateral counsel is acting ineffectively. The *Martel* court addressed an issue at the federal level similar to the state statutory discrepancy between the right to collateral counsel affirmed under Fla. Stat. § 27.7001 and the omission of a procedure for replacing ineffective counsel in Fla. Stat. § 27.711(12). SCOTUS explained in *Martel* that 18 U.S.C. § 3599 contained a "notable gap." *Martel*, 565 U.S. at 657. The statute guaranteed the right to post-conviction counsel for capital defendants seeking federal habeas relief from a state death sentence and also indicated that current counsel could be replaced by similarly-qualified counsel upon the defendant's motion. *Id.* However, the statute failed to specify how a court should decide such a motion or what standard the court should apply. *Id.* at 658. The *Martel* court held that motions for substitution of appointed counsel brought by petitioners seeking federal habeas relief in capital cases should be decided under an

"interests of justice" standard. *Id.* at 658.

Similarly, Fla. Stat. § 27.711(12) directs the court to ensure that the capital defendant is receiving quality post-conviction representation and to evaluate allegations that are made regarding the performance of current collateral counsel. However, the statute does not specify how the court should evaluate a motion filed under Fla. Stat. § 27.711(12). CCRC respectfully submits that this Court should mandate that circuit courts adopt the same "interests of justice" standard outlined in *Martel* when determining allegations of ineffective assistance of current collateral counsel.[8]

Mandating that capital defendants have the right to a hearing on their cognizable claims of ineffective assistance of collateral counsel and outlining a clear procedure for such hearings ensures that capital defendants have the quality representation intended by the Florida legislature and prevents equal protection issues from arising in future cases. Accordingly, this Court should mandate that

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[8] The *Martel* court explained that

> the "interests of justice" standard contemplates a peculiarly context-specific inquiry … [factors to consider include]: the timeliness of the motion; the adequacy of the district court's inquiry into the defendant's complaint; and the asserted cause for that complaint, including the extent of the conflict or breakdown in communication between lawyer and client (and the client's own responsibility, if any, for that conflict).

Id. at 663 (internal citations omitted).

capital defendants have the right to a hearing similar to a *Nelson* hearing under Fla. Stat. § 27.7001 and Fla. Stat. § 27.711(12).

ARGUMENT III

Wall has a state constitutional right under the Florida Constitution to proceed pro se in his post-conviction collateral proceedings, but he should not be allowed to proceed pro se because he is likely rendered mentally incapable due to the effects of a severe mental illness.

If Wall makes an unequivocal waiver of counsel, he then has a constitutional right to proceed pro se in his post-conviction collateral proceedings pursuant to Art. I § 21, Art. I § 9, and Art. I § 2 of the Florida Constitution because Wall has the right as a capital defendant to access the courts, obtain due process, and receive equal protection under the law.[9] However, despite this constitutional right, Wall should not be allowed to proceed pro se in his current post-conviction proceedings because he is likely rendered incapable of self-representation by the effects of a severe mental illness. SCOTUS explained in *Indiana v. Edwards* that

> "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant." Brief for APA et al. as *Amici Curiae* 26.

[9] CCRC maintains its position that Wall did not make an unequivocal waiver of either his post-conviction counsel or proceedings during his Rule 3.851(i) hearing. *See* IB/24-32.

554 U.S. 164, 176 (2008). SCOTUS subsequently concluded that

> the Constitution permits States to insist upon 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.

Id. at 177–78. A mental health expert hired by CCRC has conducted a preliminary review of Wall's available mental health records and the record of his trial proceedings and opined that he exhibits severe mental illness. However, this expert has not testified as to her opinion on the record because the post-conviction circuit court denied CCRC's request to hold a hearing on Wall's competency prior to the hearing on his Rule 3.851(i) waiver. It should be noted, however, that clinical pharmacologist Dr. Daniel Buffington ("Dr. Buffington") did testify as to Wall's mental illness at Wall's *Spencer*[10] hearing. Specifically, Dr. Buffington testified that Wall's medical and psychiatric records from his childhood and adulthood indicated that Wall had exhibited, among other illnesses and symptoms, bipolar disorder, attention deficit hyperactive disorder, anger management, and low impulse control. R/5054. Dr. Buffington also testified that Wall's past psychiatric history raised clinical concern as to Wall's ability to control his behavior and impulses. R/5036.

Further, the record on appeal from Wall's direct appeal and the current appeal of his Rule 3.851(i) waiver indicates that Wall is not mentally capable of proceeding

[10] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

pro se. Wall has exhibited a pattern of erratic courtroom behavior that calls into question his ability to conduct his collateral appeals without the assistance of counsel. A relevant factor to consider when determining competency is whether the defendant can "manifest appropriate courtroom behavior." Fla. R. Crim. P. 3.211(a)(2).[11] Wall was incapable of manifesting appropriate courtroom behavior during his trial proceedings. 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 a hearing on a defense motion to transport, the trial court allowed Wall to address unrelated issues. 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 subsequent pre-trial hearing, Wall continuously interrupted 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 a different mitigation-specialist, Wall stated:

[11] While CCRC makes the more specific argument in this brief that Wall is rendered unable to proceed pro se by severe mental illness, the fact that Wall cannot meet one of the factors for determining if he is competent to proceed at all surely indicates that he is not capable of proceeding pro se.

> 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. While subsequently appearing pro se at the beginning of his *Spence*r 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 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 then rescinded Wall's pro se status, removed Wall from the courtroom, and reappointed trial counsel 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.

The record of Wall's Rule 3.851(i) hearing also indicates his inability to conduct his collateral appeals pro se. Wall consistently failed to answer clearly when the post-conviction court inquired of him during the *Durocher* colloquy. Instead, Wall answered with long, nonresponsive tangents complaining about counsel's alleged misconduct, voicing disagreement with the procedure for appealing the waiver, and reiterating that he wanted his suggested plea deal. *See* IB/27. Medical

records indicating that Wall suffers from life-long mental illness and record evidence of his pattern of erratic and inappropriate courtroom behavior indicates that Wall suffers from a severe mental illness that renders him incapable of conducting his collateral appeals pro se. Accordingly, this Court must find that Wall cannot proceed pro se in his post-conviction collateral proceedings.

CONCLUSION

If the State of Florida insists on the continued use of capital punishment, then the death penalty must, at a minimum, "be imposed fairly, and with reasonable consistency, or not at all." *Eddings,* 455 U.S. at 112. To that extent, CCRC respectfully requests that this Court: (1) recede from *Gordon* and find Fla. R. Crim P. 3.851(b)(6) unconstitutional; (2) mandate the right to a hearing on capital defendants' cognizable claims of ineffective assistance of current collateral counsel; and (3) find that Wall may not proceed pro se in his current collateral appeals because he is likely rendered incapable by his severe mental illness.

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 20th day of July, 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, and to **Sara Elizabeth Macks**, Assistant State Attorney, Office of the State Attorney for the Sixth Judicial Circuit, at sa6appealseservice@co.pinellas.fl.us and smacks@co.pinellas.fl.us, on this 20th day of July, 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 20th day of July, 2020.

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