

IN THE SUPREME COURT OF FLORIDA

JESSE BELL,

Appellant,

vs.

CASE No. SC20-472

L.T. No. 19-55-CF

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR LAFAYETTE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JESSICA J. YEARY
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

BARBARA J. BUSHARIS
Assistant Public Defender
Fla. Bar No. 71780
Leon County Courthouse
301 S. Monroe St., Suite 401
Tallahassee, Florida 32301
(850) 606-8500
barbara.busharis@flpd2.com

ATTORNEY FOR APPELLANT

RECEIVED, 05/03/2021 11:02:27 PM, Clerk, Supreme Court

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ARGUMENT IN REPLY

I. The Consideration of Mitigating Evidence was Deficient.

Regarding the standard of review, a defendant who is determined to waive mitigation entirely or to present a de minimis mitigation case is not going to object to his own mitigation case. To apply a fundamental error standard here rather than an abuse of discretion standard would be a departure from this court's precedent in reviewing challenges based on a failure to bring forth or consider all available mitigation, even when the defendant has waived mitigation or presents minimal mitigation. *See Craft v. State*, 312 So. 3d 45, 52-56 (Fla. 2020), *reh'g denied*, 46 Fla. L. Weekly S52 (Fla. March 4, 2021). The State has not advanced any reason for departing from the settled rule that rulings relating to mitigation are reviewed for abuse of discretion. *E.g.*, *Spann v. State*, 857 So. 2d 845, 854 (Fla. 2003). Moreover, in this direct appeal, it would be both impossible and inappropriate to develop and present mitigation evidence that was not placed into the record during the penalty phase.

Finally, the Initial Brief argues that the consideration of mitigation in this case was so deficient as to violate due process, which is the functional equivalent of fundamental error. *See, e.g., Asay v. State*, 210 So. 3d 1, 26 (Fla. 2016) (“An error is fundamental when it goes to the foundation of the case or the merits of the cause of action and is equivalent to a denial of due process.”).¹

A. The death penalty must be the result of an individualized sentencing determination despite a pro se defendant’s personal choice to present only minimal mitigation evidence.

The problem here is not as simplistic as whether Mr. Bell was entitled to a comprehensive PSI. The problem is that he was entitled to an individualized sentencing determination. Had he not waived counsel, or had he waived mitigation entirely, certain safeguards would have been in place to assist the trial court in making that individualized determination, and then to assist this Court in reviewing it. Instead, he presented just enough mitigation to avoid

¹ Conducting a reweighing of aggravating and mitigating factors pursuant to *McKinney v. Arizona*, 140 S. Ct. 702 (2020), is not appropriate because that case specifically involved collateral review, not the defendant’s direct appeal. *See id.* at 708.

those safeguards. However, Mr. Bell's autonomy, while a paramount consideration, should not subvert the integrity of the sentencing process as a whole. See *Hamblen v. State*, 527 So. 2d 800, 804 (Fla. 1988). Society has an interest in ensuring that the death penalty is imposed only under the most rigorous standards. See *id.* Put differently, the citizens of Florida have an interest in a reliable and reviewable system of sentencing capital defendants.

B. The PSI prepared for Mr. Bell's sentencing added virtually no information to what was already in the record.

Regardless of any right to a PSI, the PSI that was ordered and filed in this case was meaningless. It simply recited what was already in the record. A release is not necessary to investigate a defendant's family background. When a PSI is ordered as a precursor to putting someone to death, merely summarizing what is already in the court file is akin to treating death as a default option.

Moreover, relieving the State of the responsibility of a PSI based on the cursory type of mitigation presented here creates a perverse incentive for a defendant who wants to waive mitigation to instead offer any small amount of mitigating information with the goal of manipulating the outcome of the sentencing hearing.

C. The sentencing process must be individualized, even when a defendant expressly or implicitly invites a death sentence, to further the public interest in the integrity of the judicial process and the fair imposition of society's highest penalty.

A defendant's choice to either expressly or implicitly accept a death sentence may be that defendant's right, but imposing that sentence demands a heightened degree of due process from the sentencing court:

Because a deprivation of liberty is qualitatively different from a deprivation of property, heightened procedural safeguards are a hallmark of Anglo-American criminal jurisprudence. But that jurisprudence has also unequivocally established that a State's deprivation of a person's life is also qualitatively different from any lesser intrusion on liberty.

Spaziano v. Florida, 468 U.S. 447, 468 (1984) (Stevens, J., concurring in part), overruled on other grounds by *Hurst v. Florida*, 577 U.S. 92 (2016).

The sentencing process in this case was not truly individualized and therefore did not meet the demands of due process.

The State is correct that Mr. Bell denied a history of abuse both during his competency evaluation and at trial, but he also

introduced into evidence a competency evaluation referring to DOC records that, in turn, referred to childhood sexual abuse. (R. 199.) The evaluation also referred to DOC records containing a diagnosis of Generalized Anxiety Disorder and Major Depressive Disorder. (R. 201.) These mitigating factors were not explored.

The State cites *Stewart v. Secretary, Department of Corrections*, 476 F.3d 1193 (11th Cir. 2007) and *Correll v. Dugger*, 558 So. 2d 422 (Fla. 1990), for the proposition that a trial court must defer to a defendant's depiction of his childhood. Both cases are distinguishable. In *Stewart*, in a collateral review proceeding, the defendant argued his trial counsel was ineffective for failing to present evidence the defendant had been abused by his stepfather. *See* 476 F.3d at 1215-17. The Eleventh Circuit rejected this claim, in part, because the defendant had not told his counsel of the abuse. *Id.* However, the court explained it also rejected the claim because counsel prepared extensively for the penalty phase; interviewed numerous witnesses, including family members; and hired a mental health expert to evaluate the defendant and testify to how the defendant had been affected by abuse and abandonment at the hands of his mother. *Id.* Finally, the court noted that two family members refused to testify, which would have made it difficult to

establish the stepfather's alleged abuse. *Id.* In no way does *Stewart* ratify the casual dismissal of a report of childhood sexual abuse when the defendant himself is declining to present mitigation.

Similarly, in *Correll v. Dugger*, this Court rejected a claim of ineffective assistance of counsel based on trial counsel's purported failure to explore the defendant's family history, which may have included abuse by the defendant's father, because it was controverted by evidence presented at trial. 558 So. 3d at 426 n.3. In that case, however, counsel presented testimony from three family members, one of whom, defendant's mother, described him as "a 'happy-go-lucky' boy who had a normal childhood." *Id.* When the defendant testified, he "painted a picture of a normal boyhood and said he was close to and loved his father." *Id.* *Correll* did not approve of ignoring evidence of serious childhood abuse. Both *Stewart* and *Correll* involve ineffective assistance claims based on the omission of specific evidence, but in the context of extensive mitigation. Even this Court's recent decision in *Craft* involved more mitigation than was presented here. See 312 So. 3d at 52-53 (noting the defendant did not waive the right to present mitigation because he offered the testimony of four family members in addition to making his own statement).

Regarding the State's purported attempt to adduce additional mitigation, the State asked exactly two questions: first, whether the biographical information in the competency report was correct (which presumably would have included the prior abuse report), and second, whether Mr. Bell had served in the military. (R. 603.)

Even when a defendant accepts or invites a death sentence, due process still requires consideration of the defendant's circumstances. Otherwise, there is no way to ensure the death penalty is imposed "with reasonable consistency, or not at all." See *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982). It is unacceptable for the death penalty to be imposed based on how vigorously an individual defendant contests it rather than on a determination that the defendant is truly among the narrow category of those who deserve execution.

II. Fundamental Error Occurred When the Court Failed to Determine Beyond a Reasonable Doubt that the Aggravating Factors Were Sufficient to Justify Death and that the Aggravating Factors Outweighed the Mitigating Circumstances.

Mr. Bell relies on the arguments and authorities in his Initial Brief to preserve this issue for further review.

CONCLUSION

For the reasons stated above as well as in his Initial Brief, Mr. Bell requests a new penalty phase trial.

CERTIFICATES OF SERVICE AND FONT SIZE

I certify that a copy of the foregoing has been furnished electronically via the Florida Courts e-filing portal to Jason Rodriguez, Assistant Attorney General, Capital Appeals Division, on May 3, 2021. I certify that this brief complies with the word count provisions of the Florida Rules of Appellate Procedure.

Respectfully submitted,

JESSICA J. YEARY
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ Barbara J. Busharis
BARBARA J. BUSHARIS
Assistant Public Defender
Fla. Bar No. 71780
Leon County Courthouse
301 S. Monroe St., Suite 401
Tallahassee, Florida 32301
(850) 606-8500
barbara.busharis@flpd2.com

ATTORNEY FOR APPELLANT