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IN THE SUPREME COURT OF FLORIDA

DONALD O. WILLIAMS,

Appellant,

vs. CASE NO. SC23-1000

STATE OF FLORIDA,

Appellee.
_____/

APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

MATTHEW S. METZ
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

/s/ George D.E. Burden
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POINT ONE

IN REPLY TO THE STATE'S CLAIM THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED WILLIAMS' MOTION TO CONTINUE.

The Appellant concedes that the state has correctly noted that at the Motion to Continue hearing the Appellant sought a six month continuance to have an updated psychological evaluation for the resentencing. The Appellant requested this evaluation because his last psychological evaluation was more than 10 years old. The trial judge asked whether he wanted a continuance to obtain the assistance of a mitigation specialist as stated in his written motion to continue and the Appellant stated "no." The Appellant stated no because he "gave up" on obtaining a mitigation specialist because he was unable to locate his current court-appointed mitigation specialist, and other JAC approved mitigation specialists refused to work for a pro se defendant. This was evident where the appellate record showed that the Appellant and standby counsel Wise's efforts over the previous six months to either locate his mitigation specialist or find a JAC approved mitigation specialist that will work with a pro se mitigation was unsuccessful.

The state asserts that the inability of the Appellant to have a mitigation specialist was of his own doing: "Regardless, even if the alleged

error had been properly preserved, this claim would still fail as Williams was not entitled to a continuance based on his difficulties in securing yet another mitigation specialist, especially when the failure to maintain one was of his own doing." AB page 42, 43. The state further argues that this Court has held that there is no constitutional requirement that a capital defendant have a mitigation specialist. The state cites the case of Jones v. State, 212 So. 3d 321 (Fla. 2017) Finally, the state argues that the Appellant sought a continuance as a dilatory tactic. The Appellant respectfully disagrees.

First, there is no evidence in the appellate record why the Appellant's court appointed mitigation specialist "disappeared" after an initial visit with the Appellant in October 2022. To claim that the disappearance of the Appellant's mitigation specialist is of the Appellant's doing is not supported by the evidence. Second, there may be no constitutional requirement for an appointment of a mitigation specialist, but under the Sixth Amendment jurisprudence an attorney is ineffective if they fail to develop mitigation evidence. See Williams v. Taylor, 529 U.S. 362 (2000)

To be effective, a pro se capital defendant must have a mitigation specialist to assist in the development of mitigation evidence. Had court-appointed counsel not used a mitigation specialist to explore mitigating

circumstances and ignore mitigating evidence, such representation would violate the Sixth Amendment. Claiming that the Appellant is warned about the difficulty of constitutionally protected self-representation should not cure the obvious foreclosure of the constitutionally required development of mitigation evidence.

Finally, the Appellant did not seek a continuance as a dilatory tactic. When it became apparent no JAC approved mitigation specialist would work on this case, the Appellant reasoned that his only alternative was to develop the mitigation evidence derived from previous mitigation specialists. Since the Appellant's last psychological evaluation was more than a decade old, it was only logical to have an updated exam to augment his penalty phase presentation.

POINT TWO

IN REPLY TO THE STATE'S CLAIM THAT THE WILLIAMS' WAIVER OF A PENALTY PHASE JURY TRIAL AND WAIVER OF MITIGATION EVIDENCE WERE KNOWING AND VOLUNTARY.

The Appellant relies upon the argument presented in the initial brief.

POINT THREE

IN REPLY TO THE STATE'S CLAIM THAT THE THIS COURT SHOULD NOT RECEDE FROM WILCOX V. STATE AND DIRECT THAT CAPITAL PRO SE DEFENDANTS BE GIVEN THE ABILITY TO VIEW DISCOVERY BEFORE TRIAL.

The Appellant relies upon the argument presented in the initial brief.

POINT FOUR

IN REPLY TO THE STATE'S CLAIM THAT THE FLORIDA'S CAPITAL SENTENCING SCHEME DOES NOT VIOLATE THE UNITED STATES OR FLORIDA STATE CONSTITUTIONS.

The Appellant relies upon the argument presented in the initial brief.

CONCLUSION

Based upon the foregoing cases, authorities, policies, and arguments, Appellant respectfully requests this Honorable Court to vacate the Appellant's sentences and remand for a new penalty phase trial.

Respectfully submitted,

MATTHEW S. METZ
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically through the Florida Courts E-Filing Portal in the Fifth District Court of Appeal, at www.myflcourtaccess.com; which will email a copy to Assistant Attorney General, Doris Meacham, at doris.meacham@myfloridalegal.com; the Office of the Attorney General, at capapp@myfloridalegal.com; and a true and correct copy thereof delivered by USPS to Mr. Donald O. Williams, DOC# U13479, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083, this 5th day of August, 2024.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is either 14-point Arial or Bookman Old Style, in compliance with Rule 9.045(b), Florida Rules of Appellate Procedure, and that the word count complies with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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