

**IN THE SUPREME COURT OF FLORIDA**

JOHN F. MOSLEY JR.,

Appellant,

vs.

CASE NO. SC23-1091

L.T. No. 16-2004-CF-006675

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

APPEAL FROM THE CIRCUIT COURT  
IN AND FOR DUVAL COUNTY, FLORIDA

**REPLY BRIEF OF APPELLANT**

MATTHEW S. METZ  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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## POINT ONE

### **IN REPLY TO THE STATE'S CLAIM THAT THE JURY DISREGARDED THE COURT'S INSTRUCTIONS AND THE LAW IS PROCEDURALLY BARRED AND WITHOUT MERIT.**

The state argues that the Appellant's claim that the jury disregarded the Court's instructions is procedurally barred. (AB 9) The state cites Tanzi v. State, 94 So. 3d 482, 494 (Fla. 2012) and Thompson v. State, 759 So. 2d 650, 661 (Fla. 2000). Both these cases are post-conviction appeals. The state also cites Martinez v. McNeil, 979 So. 2d 219 (Fla. 2008) which is also distinguishable because it involves the denial of a writ of habeas corpus.

This case is of first impression to this Court. Should this Court find that this claim is procedurally barred under the unique circumstances of this case, the Appellant should be permitted to raise this matter in a post-conviction action for ineffective assistance of appellate counsel.

## POINT TWO

**IN REPLY TO THE STATE'S CLAIM THAT THE TRIAL COURT PROPERLY DENIED MOSLEY'S MOTION FOR AN EVIDENTIARY HEARING AND HIS MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE WHERE HE FAILED TO MEET ANY OF THE REQUIREMENTS FOR RELIEF ON SUCH A CLAIM.**

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 as to Point One and order an evidentiary hearing as to Point Two.

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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 Florida Supreme Court, at [www.myflcourtagency.com](http://www.myflcourtagency.com); delivered electronically to the Office of the Attorney General, Assistant Attorney General Lisa- Marie Lerner, at [capapp@myfloridalegal.com](mailto:capapp@myfloridalegal.com); and a true and correct copy thereof delivered by mail to Mr. John Mosley Jr., DOC# J30192, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083, this 10th day of May, 2024.

## CERTIFICATE OF FONT

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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