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IN THE SUPREME COURT OF FLORIDA

WAYNE C. DOTY,

Appellant,

v. **CASE NO. SC23-1123**
L.T. No. 2011-CF-498A
STATE OF FLORIDA, **DEATH PENALTY CASE**

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR BRADFORD COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Citations to the record in this brief will be designated as follows: The record on direct appeal will be referred to as "R:" followed by the page number. References to the trial transcripts from the direct appeal will be referred to as "T:" followed by the page number. The postconviction record on appeal will be referenced as "PCR" followed by the page number.

STATEMENT OF THE CASE AND FACTS

This is an appeal of the lower court's denial of a motion for postconviction relief. Appellant, Wayne C. Doty, was convicted of first-degree murder and sentenced to death for the murder of Xavier Rodriguez, a fellow prison inmate. Doty confessed to the murder, pled guilty to the crime, and proceeded to the penalty phase, which resulted in a ten-to-two jury recommendation for death. *Doty v. State*, 170 So. 3d 731, 733 (Fla. 2015).

This Court affirmed Doty's conviction and sentence on direct appeal. *Doty v. State*, 170 So. 3d 731 (Fla. 2015). Doty's sentence, however, was later vacated by the trial court pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). Doty was given a new sentencing proceeding, and the jury unanimously recommended a sentence of death. *Doty v. State*, 313 So. 3d 573, 574 (Fla. 2020). This Court affirmed Doty's sentence of death in the direct appeal of his resentencing proceeding. *Id.*

The evidence established that Doty was incarcerated and serving a life sentence for the shooting death of his former employer when he murdered Rodriguez. *Doty*, 170 So. 3d at 734. Doty began planning the murder approximately two weeks in advance; Doty was

motivated by Rodriguez allegedly calling Doty names and stealing tobacco from him. *Doty*, 313 So. 2d at 574.

In exchange for tobacco, Doty arranged to have another inmate make a knife for him that he would use to commit the murder. *Id.* at 574. While collecting inmate food trays after dinner one evening, Doty obtained the homemade knife and hid it in a trashcan. *Id.* at 575. Doty later retrieved the knife and brought it to an interview room, where he planned to commit the murder; he hid it in the duct work so he could easily retrieve it. *Id.*

Doty enlisted the help of another inmate, Williams Wells, who assisted Doty with convincing Rodriguez to meet them in the interview room. *Id.* Doty and Wells then tricked Rodriguez into letting them bind his hands by betting that Rodriguez could not get out of "Coast Guard handcuffs." *Id.* Doty placed Rodriguez in a chokehold, a ligature was tied around Rodriguez's neck to strangle him, and Doty repeatedly stabbed Rodriguez with the homemade knife while Wells stood guard as the lookout. (PCR 1309); *Doty*, 313 So. 3d at 757. Doty admitted that he was hoping to pull out Rodriguez's heart to ensure he was really dead, but the knife was too dull to do so. *Id.* After smoking and showering, Doty and Wells called a prison official

and confessed to the crime. *Id*.

At Doty's resentencing hearing, the jury unanimously found that the State proved all three aggravating factors: that Doty was serving a sentence of imprisonment for a prior conviction; that Doty was previously convicted of a capital felony (to which Doty stipulated); and the cold, calculated, and premediated aggravating factor. *Doty*, 313 So. 3d at 575. The court agreed and weighed the aggravation against seven of Doty's nonstatutory mitigating circumstances. The court found that the aggravating factors "far outweigh[ed]" the mitigating circumstances and sentenced Doty to death. (R. 1399).

After this Court affirmed Doty's death sentence, Doty filed his motion for postconviction relief alleging the following: a *Giglio*[1] violation occurred during Inspector Snow's resentencing hearing testimony; Doctor Hamilton testified falsely during resentencing about the stab wounds and also testified beyond the scope of his expertise; Doty's death sentence is disproportionate; Doty should not have represented himself; the court's questioning of the jury venire

[1] *Giglio v. United States*, 405 U.S. 150 (1972).

violated Doty's due process rights; Doty was denied effective assistance of counsel and a complete investigation by standby counsel; and cumulative error. (PCR 543-591).

The postconviction court summarily denied all the claims finding them procedurally barred and/or meritless. (PCR. 1307-1331).

This appeal follows.

SUMMARY OF THE ARGUMENT

Issue I: Doty's *Giglio* claims are procedurally barred because they are based on information available to Doty at the time of his 2018 resentencing, yet Doty failed to raise the claims during the direct appeal of his resentencing proceeding. Nevertheless, Doty is not entitled to relief, where he failed to establish that the witnesses testified falsely in 2018, or that the prosecutor knew the witnesses testified falsely. Doty's complaints regarding the testimony fail to show that the testimony is actually false. The postconviction court's summary denial of this claim requires affirmance.

Issue II: The postconviction court properly denied Doty's claim that Doctor Hamilton's 2018 testimony failed to prove that Doty was the actual cause of the victim's death. This claim is procedurally

barred because Doty had the ability to challenge the testimony on direct appeal, but he failed to do so. In addition to being procedurally barred, it is meritless given that Doty's guilt had already been established. Doty pled guilty to first-degree murder. Regardless of the testimony about the stab wounds, Doty's involvement in the murder was undisputed. For all these reasons, Doty is not entitled to relief on this claim.

Issue III: This Court has abandoned relative culpability review, and as such, the postconviction court properly denied Doty's claim to have his sentence reviewed for relative culpability.

Issue IV: Doty's argument that he should not have been allowed to exercise his constitutional right to proceed pro se is procedurally barred for not having been raised on direct appeal. His claim is further without merit where he was competent to choose to represent himself, and the court conducted a thorough inquiry to ensure that his decision was knowing, intelligent, and voluntary.

Additionally, the postconviction court did not abuse its discretion in denying Doty's motion to have brain imaging testing performed during the postconviction proceedings when the imaging was not necessary and Doty was not prejudiced by the court's denial.

The postconviction court determined that Doty's purposeful actions in planning and committing the murder contradicted any potential evidence suggesting that he was unaware of the criminality and consequences of his actions.

Issue V: The postconviction court properly denied Doty's request for an evidentiary hearing to inquire about alleged questioning of jurors that occurred during the resentencing proceeding. This claim is procedurally barred for not having been raised on direct appeal. The claim is also without merit given that Doty chose not to question juror Grow and decided to exercise a peremptory challenge on her. (R. 1757, 1896-97). Doty affirmed that he knew "how to use cause challenges," yet he did not exercise a for-cause challenge on Grow or on any other juror. (R. 1693-95).

Issue VI: Doty elected to represent himself and proceed pro se without the assistance of counsel. He cannot now claim ineffective assistance of counsel. To the extent that Doty is raising a challenge of ineffective assistance of counsel of his original trial counsel before he waived counsel, Doty fails to specifically allege how that counsel was deficient and how he was prejudiced by the alleged deficiency.

Issue VII: Given that Doty's postconviction claims are

procedurally barred, insufficiently pled, meritless, and/or refuted by the record, Doty is not entitled to an evidentiary hearing on any of his claims.

ARGUMENT

ISSUE I

THE POSTCONVICTION COURT PROPERLY DENIED DOTY'S PROCEDURALLY BARRED AND MERITLESS *GIGLIO* CLAIMS WHEN DOTY FAILED TO RAISE THE CLAIMS ON DIRECT APPEAL OF HIS RESENTENCING PROCEEDING AND DOTY FAILED TO SHOW THAT THE CHALLENGED TESTIMONY WAS FALSE.

Doty challenges the lower court's summary denial of his *Giglio* claims based on the 2018 resentencing hearing testimony of Inspector Kevin Snow and Doctor William Hamilton. He specifically argues that Snow changed his testimony in 2018 to make Doty more culpable for the murder, and that his false testimony was left uncorrected by the prosecutors. Doty further claims that Doctor Hamilton testified falsely during Doty's resentencing proceeding about the victim's survivability of the stab wounds.

Any Potential *Brady* Violation is Insufficiently Pled.

At the outset, it must be noted that despite this being a *Giglio* claim, Doty cites *Brady v. Maryland*, 373 U.S. 83 (1963), in the title

of this claim and briefly references *Brady* within an introductory paragraph under this issue; however, he makes no argument that a *Brady* violation occurred. (Initial Brief at 11-12).

"Where a *Brady* violation has been alleged, the defendant must establish a prima facie case that 'there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000). Doty failed to set forth any argument in support of a *Brady*[2] violation, and thus, any such claim is not sufficiently pled and should be deemed waived. *Barwick v. State*, 88 So. 3d 85, 102 (Fla. 2011) (finding claim waived when the defendant did not set forth any argument in his brief); *Griffin v. State*, 866 So. 2d 1, 7 (Fla. 2003) (mere references to arguments below without further elucidation does not suffice to preserve the issue; therefore, the claim is deemed to have been waived).

Doty's *Giglio* Claims Are Procedurally Barred.

The postconviction court properly determined that Doty's *Giglio* claims are procedurally barred. Relying on this Court's opinion in

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

Smith v. State, 445 So. 2d 323, 325 (Fla. 1983), the court emphasized that issues "which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." (PCR 1316-17).

Doty's contention that his *Giglio* claims are cognizable under the fundamental error standard is misguided. Initial Brief at 17, 20-21. Doty first alleges that under *Johnson v. State*, 128 So. 3d 155 (Fla. 2d DCA 2013), *Giglio* claims may be cognizable during postconviction when not raised on direct appeal. The Second District's ruling, however, was premised on the understanding that although *Giglio* claims are occasionally made on direct appeal, they are more typically raised in a postconviction motion "because these violations are usually discovered after the trial is over." *Robinson v. State*, 65 So. 3d 75, 76 (Fla. 2d DCA 2011). Here, as the postconviction court correctly determined, Doty's alleged *Giglio* violations were based on information that Doty had at the time of his resentencing hearing, and thus, should have been raised on direct appeal of his resentencing proceeding. *Johnson* is inapplicable here.

While Doty also alleges that the fundamental error standard of review should be applied in postconviction proceedings, he fails to cite

any authority from this Court supporting that proposition. Contrary to what Doty asserts, the fundamental error standard is inapplicable here when Doty had the opportunity to raise this issue on direct appeal and failed to do so. *See Conahan v. State*, 118 So. 3d 718, 732 (Fla. 2013) (rejecting fundamental error argument and finding claim procedurally barred for not being raised on direct appeal); *Franqui v. State*, 965 So. 2d 22, 35 (Fla. 2007) (finding postconviction claim procedurally barred when it could have been raised as a fundamental error claim on direct appeal).

Here, Doty could have raised these challenges on the direct appeal of his resentencing proceeding, but he failed to do so. As such, the postconviction court properly found the *Giglio* claims barred. *See Thompson v. State*, 759 So. 2d 650, 660 (Fla. 2000) (claim that could have been raised during direct appeal was procedurally barred in postconviction action); *see also Jimenez v. State*, 265 So. 3d 462, 479 (Fla. 2018) ("[A] *Giglio* claim based on information that the defendant and defense counsel had at the time of trial is barred."); *Calhoun v. State*, 312 So. 3d 826, 852 (Fla. 2019) (holding that postconviction *Giglio* claim is procedurally barred because it is based on information available to the defendant at the time of his trial); *Moore v. State*, 132

So. 3d 718, 724 (Fla. 2013) (finding *Giglio* claim procedurally barred when it was based on information the defendant and defense counsel had at the time of trial); *Byrd v. State*, 14 So. 3d 921, 927 (Fla. 2009) (finding *Giglio* claim procedurally barred when it was based on a police report that had been previously disclosed to the defendant). Accordingly, Doty was not entitled to an evidentiary hearing and summary denial was appropriate. *Owen v. State*, 986 So. 2d 534, 549 (Fla. 2008) (finding no error in the summary denial of a *Giglio* claim that was procedurally barred and legally insufficient).

Doty Failed To Establish That A *Giglio* Violation Occurred.

Even without the procedural bar, Doty would not be entitled to relief. To establish a *Giglio* violation, Doty was required to show that: (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material. *Moore*, 132 So. 3d at 724. A postconviction court's decision regarding whether to grant an evidentiary hearing on a postconviction motion depends on the written materials before the court, and therefore, its ruling essentially constitutes a pure question of law that is subject to de novo review. *Dailey v. State*, 329 So. 3d 1280, 1284 (Fla. 2021). When this Court reviews a lower court's summary denial of a motion for

postconviction relief, it accepts the allegations in the motion as true to the extent that they are not conclusively rebutted by the record. *Dailey*, 329 So. 3d at 1284.

Inspector Snow Sub-Claim

Even though the court found the claim procedurally barred, it nevertheless addressed the first prong of *Giglio*, finding that Doty failed to establish that the witness had testified falsely. (PCR 1316-17). Doty contends that Snow testified falsely by relaying an "incorrect sequence of events of the murder." Initial Brief at 16. The statement at issue is Snow's answer to being asked whether ligatures were used before the stabbing. He replied, "I think it was after the actual stabbing. Wells came back in the room, kicked Rodriguez, and then that's when they actually used the ligatures, if I'm remembering correctly, and they put the ligatures around the throat." (T. 2069-70).

This statement, even if incorrect, cannot amount to false testimony. At most, it would mean that Snow was not remembering correctly, not that he was testifying falsely. *See, e.g., Moore v. State*, 132 So. 3d 718, 726–27 (Fla. 2013) (Moore failed to show that false testimony was presented at trial where Gaines testified he could not recall seeing Little Terry on the day of the murder; and at the

evidentiary hearing, Gaines testified that he chased Little Terry, but he did not remember if it was on the day of the murder).

Further, even if Snow's 2018 penalty-phase testimony could be deemed inconsistent with his 2013 trial testimony, that inconsistency would not be enough to establish a *Giglio* violation. *Hernandez v. State*, 180 So. 3d 978, 994 (Fla. 2015) (explaining that mere differences in testimony found in witness's statements made at different times are insufficient to show perjury); *Barwick v. State*, 88 So. 3d 85, 104-05 (Fla. 2011) (witness's description of events, as testified to at different trials, represented changed interpretation of facts, not false testimony).

"In the *Giglio* context, the suggestion that a statement may have been false is simply insufficient; the defendant must conclusively show that the statement was actually false." *Hernandez v. State*, 180 So. 3d 978, 994 (Fla. 2015) (quoting *Maharaj v. Sec'y Dept. of Corr.*, 432 F.3d 1292, 1313 (11th Cir. 2005)). Doty failed to conclusively show that the statement was actually false, nor could he, given that the statement was about whether Snow was remembering correctly, not whether he was telling the truth. Since the testimony at issue was not false, the prosecutor could not have known it to be so. *United*

States v. Lopez, 985 F.2d 520, 524 (11th Cir. 1993) ("Only knowing use of perjured testimony constitutes a due process violation."). Accordingly, the first two prongs of *Giglio* fail.

Even if Doty had established the required elements of *Giglio*, he still would not be entitled to relief because Snow's statement was not material. The correct sequence of events in the commission of the murder was relayed to the jury during his resentencing proceeding through Doty's affidavit and a transcript from Doty's 2011 interview, both of which were admitted into evidence without objection. (PCR 1316). The prosecutor also repeated the correct sequence of events regarding the ligature strangulation and stabbing during opening statement. (R. 1972-73). Even if the jury or judge had been confused about the order of events, it would not have affected the recommendation or sentence. Not one of the aggravating factors had anything to do with the sequence of events.

The jury found that the murder was committed in a cold, calculated, and premeditated manner because of the nature of Doty's actions—not because of the order in which they occurred. Doty's planning was meticulous and plotted at length over two weeks. Doty obtained a weapon in secret and hid it in the interview room. He then

tricked the victim into entering the interview room and duped him into allowing Wells to bind his hands.

While the victim was defenseless and bound, Doty placed him in a chokehold, a ligature was secured around his neck, and Doty took the knife and stabbed him approximately twenty-five times. The jury and the court would have found the CCP aggravator irrespective of the sequence of events.

Likewise, the other two aggravating factors had nothing to do with the order of events. Doty indisputably committed the murder while under a sentence of imprisonment and had a previous conviction for another capital felony. These two aggravators were given "great weight" and "very great weight," respectively. (R. 1382-83). There is no reasonable possibility that the testimony could have affected the jury's verdict.

Dr. Hamilton Sub-Claim

Doty next maintains that the Medical Examiner, Dr. Hamilton, testified falsely concerning the survivability of the stab wounds. Doty takes issue with Dr. Hamilton's 2018 testimony that the stabbing could be sufficient to cause death in that "25 stab wounds with a dirty shank is more likely to be fatal from an ultimate infection."

Initial Brief at 18. Doty argues that this testimony is inconsistent with the doctor's prior testimony in which he sated that if Rodriguez had suffered only stab wounds, then he would have had "a good probability" of surviving and if the stab wounds were "properly treated" with antibiotics, then he had a good chance of survival. Initial Brief at 18.

The testimony is not inconsistent given that the 2018 testimony refers to death from ultimate infection (lack of treatment), while the earlier statement presumes that the wounds were properly treated with antibiotics. Given the context, Dr. Hamilton's testimony was not false. *Duckett v. State*, 231 So. 3d 393, 400-01 (Fla. 2017) (the first element of *Giglio* was not satisfied because the defendant could not establish that the testimony in question—when considered in its full context—was false); *Barwick*, 88 So. 3d 104-105 (witness's description of events, as testified to at different trials, represented changed interpretation of facts, not false testimony).

The postconviction court properly determined that even if the testimony contained some differences, it still was not false. (PCR 1317). Because the testimony was not false, Doty cannot establish the second element of *Giglio*—that the prosecutor knew it was false.

In light of Doty's failure to allege and establish the required elements of a *Giglio* violation, summary denial was appropriate. *See Rodriguez v. State*, 919 So. 2d 1252, 1270 (Fla. 2005) (finding the summary denial of Rodriguez's *Giglio* claim proper where Rodriguez did not show that the testimony presented was actually false or that the prosecutor had any knowledge of allegedly false testimony); *see also Doorbal v. State*, 983 So. 2d 464, 480 (Fla. 2008) (finding the trial court did not err in summarily denying the *Giglio* claim where Doorbal completely failed to demonstrate that the State knew the witness offered false testimony).

Even if Doty had established the first two elements of *Giglio*, he still could not prevail because there is no reasonable possibility that the testimony could have affected the verdict. The death sentence had nothing to do with the efficacy of antibiotics or whether the victim would have died of infection. With or without the complained-of testimony, the jury would have found the CCP aggravator, the prior-violent-felony aggravator, and the while-incarcerated aggravator. The postconviction court found that given Doty's "involvement in the planning and execution of the murder, the alleged inconsistences did not have any effect on the aggravating factors the sentencing court

(this Court) found in its sentencing order; nor would they change the fact that the aggravating factors in this case outweigh the mitigat[ion]." (PCR 1318). Because the testimony with which Doty takes issue has nothing to do with the basis of his sentence and could not have affected the verdict, it is not material.

Based on the foregoing, the postconviction court's denial of this claim should be affirmed.

ISSUE II

DOTY'S SUBSTANTIVE CHALLENGE TO THE MEDICAL EXAMINER'S TESTIMONY DURING HIS RESENTENCING PROCEEDING IS PROCEDURALLY BARRED AND MERITLESS GIVEN THAT GUILT WAS ALREADY ESTABLISHED AND DOTY'S INVOLVEMENT IN THE PLANNING AND EXECUTION OF THE MURDER WAS NOT IN DISPUTE.

In his second claim, Doty challenges the Medical Examiner's testimony when Doty never objected to the testimony or challenged the testimony during the direct appeal of his resentencing proceeding. Doty alleges that the Medical Examiner's testimony during his 2018 resentencing contradicted his earlier testimony from Doty's 2013 penalty phase as well as from Well's trial in 2017, and that the 2018 testimony failed to establish that the stab wounds were the actual cause of the victim's death. Doty did not raise any issue

relating to the Medical Examiner's testimony when he had the opportunity to appeal his sentence. *Doty v. State*, 313 So. 3d 573 (Fla. 2020).

Now, during his postconviction proceedings, Doty requests an evidentiary hearing to question Doctor Hamiliton regarding any alleged inconsistencies between his testimony at Doty's resentencing hearing and his earlier testimony. This claim is procedurally barred and untimely. The postconviction court found this claim procedurally barred for not being raised on direct appeal. (PCR 1319). Doty is entitled to no relief here. *Teffeteller v. Dugger*, 734 So. 2d 1009, 1016 (Fla. 1999) (holding substantive postconviction claims procedurally barred when they could have been raised on direct appeal); *Dufour v. State*, 905 So. 2d 42, 67 (Fla. 2005) (a claim of error during trial is procedurally barred when it should have been presented on direct appeal).

Doty's contention that the postconviction court erred when it found the claim procedurally barred is incorrect. Initial Brief at 23-24. While the fundamental error standard could have been used to review Doty's unpreserved claim had he raised it on direct appeal of his resentencing proceeding, it is now improper to apply that

standard to his postconviction claim. *See Franqui*, 965 So. 2d at 35. (finding postconviction claim procedurally barred when it could have been raised as fundamental error on direct appeal).

Nevertheless, even if this claim were not procedurally barred, it is meritless. As the postconviction court aptly noted, Doty's involvement in the murder of the victim was not in dispute. (PCR 1319). "Regardless of Dr. Hamilton's testimony about the stab wounds, Defendant was an active participant in the planning and execution of the murder of the victim." (PCR 1319). Doty "had clear intent for the death of the victim by any of the means used by him and Wells during the murder." (PCR 1319). The court explained that Doty was the primary assailant. (PCR 1320). "Regardless of Wells' tying the ligature around the victim's neck, Defendant was still the one in charge and directing the actions which led to the victim's death." (PCR 1320). For all these reasons, Doty is not entitled to relief, and the lower court's summary denial should be affirmed.

ISSUE III

DOTY'S REQUEST FOR THE POSTCONVICTION COURT TO CONDUCT A RELATIVE CULPABILITY REVIEW OF HIS DEATH SENTENCE IS PROCEDURALLY BARRED AND CONTRARY TO THIS COURT'S DECISION IN *LAWRENCE V. STATE*, 308 SO. 3D 544 (FLA. 2020), SUMMARY DENIAL OF THE CLAIM WAS WARRANTED.

In his third claim, Doty complains that the postconviction court erred in denying his claim that his death sentence was disproportionate to his codefendant's sentence, and Doty contends that he should have been given an evidentiary hearing to show that codefendant Wells was the "mastermind and murderer[.]" Initial Brief at 27. The basis of this claim is that Doty's codefendant, William Wells, is allegedly more culpable and because he received a life sentence, Doty's death sentence is disproportionate. The postconviction court properly denied this claim without a hearing.

First, the court correctly noted that Wells's life sentence was known to Doty at the time of his trial (PCR 1321). Doty, however, failed to raise this claim during his direct appeal. *Doty v. State*, 313 So. 3d 573 (Fla. 2020). As the lower court recognized, "Issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." *Smith v. State*,

445 So. 2d 323, 325 (Fla. 1983). Accordingly, this claim was properly denied as procedurally barred.

Next, this claim was properly denied because, as Doty recognizes, this Court no longer requires relative culpability review. *Cruz v. State*, 372 So. 3d 1237 (Fla. 2023). It is "clear that relative culpability review was indeed a part of its comparative proportionality review. Consequently, this Court's elimination of comparative proportionality review in *Lawrence* also resulted in the elimination of its relative culpability review." *Id.* at 1243. While Doty argues that the law does not prohibit relative culpability review, that argument was rejected by this Court in *Cruz*. *Id.* at 1244-45; *see also Reynolds v. State*, 373 So. 3d 1124, 1128 (Fla. 2023) (explaining that this Court has "abandoned" the relative culpability doctrine).

In *Cruz*, this Court emphasized that "[b]ecause a capital sentencing court is required to give due consideration to each mitigating circumstance that exists relative to each individual defendant, there can be no constitutional requirement that capital codefendants who appear equally culpable on the facts of a case receive the same sentence." *Cruz*, 372 So. 3d at 1244.

Here, the postconviction court recognized this Court's decision

in *Lawrence* abandoning comparative proportionality review, and it determined that relative culpability review was not required. As such, factual development of this claim was not warranted and summary denial was appropriate. Affirmance is required. *Cf Reynolds*, 373 So. 3d at 1128 (holding that Reynolds's reliance on this Court's abandoned relative culpability review cannot support his request for additional DNA testing).

Lastly, the postconviction court pointed to record evidence refuting Doty's contention that he was less culpable—Doty procured the murder weapon and hid it in the interview room; Doty lured the victim into the interview room; Doty committed more physical aspects of the murder; and Doty directed Wells throughout the murder. (PCR 1321-22). "Because Defendant was as culpable or more culpable than Wells in planning and committing the murder, Defendant could not benefit from relative culpability review even if it were applied to him in this case." (PCR 1322). Doty is not entitled to relief.

ISSUE IV

DOTY'S CHALLENGE TO HIS SELF-REPRESENTATION IS PROCEDURALLY BARRED FOR NOT HAVING BEEN RAISED ON DIRECT APPEAL, AND HIS CLAIM IS MERITLESS GIVEN DOTY'S KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF COUNSEL.

Doty alleges that he should not have been permitted to represent himself, and he also challenges the denial of his motion for PET and MRI scans. Doty's claim regarding self-representation could have been raised on direct appeal; however, Doty failed to do so. Thus, the postconviction court properly determined that it is procedurally barred. *Knight v. State*, 211 So. 3d 1, 17 (Fla. 2016) (finding claim as to the waiver of counsel procedurally barred); *Muhammad v. State*, 603 So. 2d 488, 489 (Fla. 1992) ("Issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack."); *see also Morton v. State*, 995 So. 2d 233, 241 (Fla. 2008) (finding claim that defendant received inadequate mental health evaluation procedurally barred on collateral review because it could have been raised on direct appeal).

Under the Circumstances, The Trial Court Was Required to Grant Doty's Request for Self-Representation.

The postconviction court found that the "entirety of the record

in this case conclusively refutes Defendant's claim that he should not have been allowed to represent himself." (PCR 1312). A criminal defendant has the right to self-representation. *Craven v. State,* 310 So. 3d 891, 898 (Fla. 2020). The United States Supreme Court has established that the Sixth Amendment—irrespective of consequences—grants to each criminal defendant the right of self-representation. *Faretta v. California*, 422 U.S. 806 (1975). A competent defendant has the right to decide the course of his or her own defense. *Sparre v. State*, 164 So. 3d 1183, 1199 (Fla. 2015); *Durocher v. Singletary*, 623 So. 2d 482, 483 (Fla. 1993).

The trial court was required to allow Doty to proceed pro se, as forcing a lawyer upon Doty would have violated the dictates of *Faretta*. *Hamblen v. State*, 527 So. 2d 800, 804 (Fla. 1988). Though "death is different," "all competent defendants have a right to control their own destinies." *Id.* The lower court conducted a thorough inquiry in which it made certain that Doty's waiver was knowing, intelligent, and voluntary. *Traylor v. State*, 596 So. 2d 957, 966-67 (Fla. 1992).

Dr. Krop testified during Doty's resentencing that there was no doubt in his mind that Doty was competent to represent himself. (T.

220). Doty suffered from no significant mental illness. (PCR 1323). He understood that he could be sentenced to death and acknowledged that in the previous trial (in which he proceeded pro se) he was sentenced to death. (T. 1690-91, 1698). He understood that a lawyer "may be prepared more thoroughly to conduct a sentence hearing" and "could perhaps elicit more favorable facts…" (T. 1691). Doty understood that a lawyer "may discover possible violations of constitutional rights," "obtain information about the case through the skillful use of discovery," and move to exclude evidence. (T. 1688-90).

Despite knowing all this, Doty "[a]bsolutely [did] not" want the trial court to appoint a lawyer for him. (T. 1689). Doty had no questions about exercising his right to counsel; he had previously conducted voir dire and knew how to exercise peremptory and for-cause challenges, and was otherwise "very familiar with the Florida Rules of Criminal Procedure." (T. 1689,1693-95). Importantly, Doty understood that any deficient performance on his part could not be a basis for a new trial. (T. 1695). Yet, Doty now claims that he was at a disadvantage.

The case of *Indiana v. Edwards*, 554 U.S. 164 (2008), bears no

relevance to the instant case where Doty is a literate man with no severe mental illness; Doty had properly waived his right to counsel and had previously drafted his own legal motions and represented himself. Doty's performance throughout his resentencing proceeding conclusively refutes the notion that he has a mental illness so severe that he was not competent to represent himself.

Given Doty's voluntary waiver, the trial court had no basis to force counsel upon him. *Weaver v. State*, 894 So. 2d 178, 192 (Fla. 2004) (recognizing that a trial court shall not deny a defendant's unequivocal request to represent himself when the court makes a determination on record that the defendant has made a knowing and intelligent waiver of the right to counsel). In its order denying relief, the postconviction court highlighted that Doty suffered from no significant mental illness at the time of his trials; a thorough *Faretta* inquiry was conducted with Doty and it was clear that he understood the consequences of self-representation; Doty was "resolute in his decision to represent himself" and "at no point waivered in his decision;" Doty understood that any errors that he made acting pro se would not be grounds for a new trial; "Defendant ably represented himself in two penalty phase trials without any difficult in

researching, arguing, or understanding the law applicable to his case and the death penalty;" and Doty "put forward mitigation during the penalty phase trial that was substantive and provided the jury with a complete picture of his childhood, familial relationships, the prison milieu, and his motivation for committing the murder." (PCR 1312). Doty further established that he was a model inmate prior to the murder. (PCR 1312).

Doty's claim that he should not have been permitted to represent himself is both procedurally barred and refuted by the record. Based on the foregoing, the trial court's summary denial should be affirmed. *McKenzie v. State*, 153 So. 3d 879 (Fla. 2014); *see also Barnes v. State,* 124 So. 3d 904, 912 (Fla. 2013) (finding that the trial court record supports the court's conclusion that Barnes was intelligent, understood court procedure, and was completely capable of representing himself).

The Postconviction Court Did Not Abuse Its Discretion by Denying Doty's Motion for Brain Scans.

Next, Doty challenges the postconviction court's denial of his request for MRI and PET scans. A trial court's decision to deny a defendant's motion for brain imaging will not be disturbed absent an

abuse of discretion. *Rogers v. State*, 783 So. 2d 980, 998 (Fla. 2001). In evaluating whether the lower court abused its discretion, this Court generally considers whether the defendant established a particularized need for the testing, and whether the defendant was prejudiced by the denial of the motion for testing. *Rogers*, 783 So. 2d at 999.

Here, Doty requested the testing during his postconviction proceedings for his "experts to finalize their medical opinions and written reports." (PCR 425). His request for testing explained that his postconviction motion will allege that "standby counsel and court-appointed specialists failed to investigate and present brain damage as mitigation. Neither counsel, nor mitigation experts, previously obtained or recommended neuroimaging for/to Mr. Doty to consider before developing testimony and evidence at resentencing." (PCR 425). Doty concludes that, because of this, he was denied effective assistance of counsel. (PCR 425).

Given that Doty voluntarily chose to represent himself, he cannot now claim ineffective assistance of counsel regarding the presentation of mitigating evidence. *Barnes v. State*, 124 So. 3d 904, 917 (Fla. 2013); *Lamarca v. State,* 931 So. 2d 838, 850 (Fla. 2006);

Goode v. State, 403 So. 2d 931, 933 (Fla. 1981). As such, any development as to what potential mitigation was available but not presented is inconsequential and would not form a basis for relief. *Cf. Covington v. State*, 348 So. 3d 456, 470 (Fla. 2022) (where the postconviction court determined that the defendant was not prejudiced by the lack of a PET scan where any finding of organic brain damage would not warrant a new penalty phase). Thus, Doty did not establish a particularized need for the testing, nor was he prejudiced by its denial.

Additionally, even if Doty could successfully raise an ineffective assistance of counsel claim, it would have no merit given that Doty did retain a defense expert for mental health mitigation—Dr. Krop. During his resentencing hearing, Doty presented numerous witnesses in support of non-statutory mitigation as well as Dr. Henry Krop, who testified to Doty's mental health. (R. 1570-1575). A PSI report was completed during Doty's original penalty phase, and Doty did not object to that PSI being utilized during his resentencing hearing. (R. 1576). During the *Spencer*[3] hearing, Doty, representing

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

himself pro se, eloquently outlined for the court all the available mitigation; he expressed satisfaction with the presentation of evidence; and he relayed that he felt that no additional mitigation or witnesses needed to be presented. (R. 1567-1588).

As collateral counsel conceded, none of Doty's mitigation experts appointed prior to his postconviction proceedings had recommended brain imaging. (PCR 425). This Court has long recognized that trial counsel is entitled to rely on a qualified expert's opinion and such reliance will not be rendered unreasonable just because collateral counsel was able to find a new expert with a more favorable opinion. *State v. Mullens*, 352 So. 3d 1229, 1237 (Fla. 2022); *Brant v. State*, 197 So. 3d 1051, 1069 (Fla. 2016). Therefore, even if Doty could have successfully raised an ineffective assistance of counsel claim, it would not have merit given reliance on experts utilized during the trial proceedings.

In light of Doty's knowing decision to represent himself during his resentencing hearing and the limiting effect that his self-representation had on his ability to raise collateral claims, the subsequent denial of his request for brain imaging to be conducted during his postconviction proceeding was not an abuse of discretion.

Furthermore, the postconviction court determined that even if Doty presented evidence of brain damage from his new experts retained during the postconviction proceeding, any evidence of impairment would have been rejected given Doty's purposeful actions in committing the murder being indicative of someone who knew his actions were wrong and who could conform his conduct to the law if he so desired. (PCR 1300-01). "[T]he record reflects that the Defendant was consistently a rational, cooperative, social, and well-behaved inmate in the years leading up to the murder. There is no credible evidence that the Defendant was manifesting abnormal mental health symptoms…" (PCR 1301). "The Defendant admitted to the FDLE special agents that he planned and executed the murder with the purpose that it succeed without interruption. The Defenant's plan and execution of the murder belies any suggestion that he was unaware of the criminality and consequences of his actions." (PCR 1301-02). No abuse of discretion has been shown.

For all these reasons, the postconviction court's decisions should be affirmed.

ISSUE V

DOTY WAS NOT ENTITLED TO AN EVIDENTIARY HEARING RELATING TO JURY QUESTIONING THAT ALLEGEDLY OCCURRED DURING DOTY'S RESENTENCING HEARING WHEN DOTY COULD HAVE RAISED THIS ISSUE ON APPEAL BUT FAILED TO DO SO.

In this issue, Doty challenges the trial court's alleged conversation with prospective jurors during venire that occurred outside of Doty's presence. Doty failed to raise this issue on appeal of his resentencing proceeding. *Doty*, 313 So. 3d 573. Instead, Doty raised this claim in his motion for postconviction relief, requesting an evidentiary hearing relating to the trial judge's alleged questioning of a venire member outside of Doty's presence.

The lower court correctly determined that this claim was procedurally barred. Contrary to what Doty asserts, the fundamental error standard is inapplicable here when Doty had the opportunity to raise this issue on direct appeal and failed to do so. *See Conahan v. State,* 118 So. 3d 718, 732 (Fla. 2013) (rejecting fundamental error argument and finding claim procedurally barred for not being raised on direct appeal); *Franqui v. State*, 965 So. 2d 22, 35 (Fla. 2007)(finding postconviction claim procedurally barred when it could

have been raised as a fundamental error claim on direct appeal).

Given that this claim is procedurally barred on collateral review, the postconviction court's summary denial should be affirmed. *See Overton v. State*, 976 So. 2d 536, 566 (Fla. 2007) (challenge to a rule preventing the interviewing of jurors is procedurally barred because it could have been asserted on direct appeal); *Arbelaez v. State,* 775 So. 2d 909, 920 (Fla. 2000) (holding that the claim of not being able to interview jurors was procedurally barred because the claim should and could have been raised on direct appeal).

Moreover, the court found that even if this claim were not procedurally barred, it is meritless given the fact that Doty was made aware of the prior discussion between the court and prospective juror Grow during venire regarding her relationship with a DOC employee; Doty had the opportunity to question Grow on that matter; Doty used a peremptory strike on Grow; Doty did not attempt to challenge Grow for cause, nor did he exhaust his peremptory challenges. (PCR 1324-25). Thus, Doty's claim was conclusively refuted by the record and procedurally barred. The postconviction court's summary denial of this claim should be affirmed.

Lastly, to the extent that Doty may also be raising a challenge

to the trial court's denial of his motion to Interview Venire Member (Initial Brief at 39), this argument is unpreserved because he never raised it in his postconviction motion below, and therefore, the lower court never had an opportunity to rule on it. Nevertheless, it is procedurally barred for not being raised on the direct appeal of his resentencing proceeding. *See Lukehart v. State*, 70 So. 3d 503, 523 (Fla. 2011) (challenge to juror interview rule procedurally barred on collateral review when not raised on direct appeal).

Doty is not entitled to postconviction relief.

ISSUE VI

GIVEN THAT DOTY KNOWINGLY EXERCISED HIS RIGHT TO SELF-REPRESENTATION, HE CANNOT NOW CLAIM INEFFECTIVE ASSISTANCE OF COUNSEL.

In this claim, Doty argues that his initially-appointed trial counsel was ineffective, and had counsel developed "a rapport" with Doty, Doty may not have chosen to represent himself. This ineffective assistance of counsel claim is related to defense counsel during Doty's trial, not his resentencing. Doty claims that he may not have chosen to represent himself during trial and then subsequently during his resentencing proceeding, had his initial counsel built a relationship with him. Doty further insists that his standby counsel

was ineffective for not investigating and presenting mitigating evidence. The postconviction court found this claim procedurally barred, and in the alternative, without merit.

To be entitled to relief on this claim, Doty must show that his attorney's performance was deficient, and that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The United States Supreme Court has long recognized that conclusory allegations are insufficient to satisfy *Strickland. Hill v. Lockhart*, 474 U.S. 52 (1985) (conclusory allegations of ineffective assistance of counsel are insufficient to raise a constitutional issue); *see also Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991) (vague, conclusory, or unsupported allegations cannot support an ineffective assistance of counsel claim); *Chavez v. Secretary, Florida Dept. of Corr.*, 647 F.3d 1057, 1061 (11th Cir. 2011) (allegations must be factual and specific, not conclusory; conclusory allegations are not enough to warrant relief).

In addition, this Court has repeatedly emphasized the importance of setting forth specific, rather than conclusory claims, to show entitlement to postconviction relief. *See Ellerbee v. State*, 232 So. 3d 909, 918 (Fla. 2017) ("Mere speculation is not sufficient to

form the basis for postconviction relief."); *Maharaj v. State*, 778 So. 2d 944, 951 (Fla. 2000) ("Postconviction relief cannot be based on speculation or possibility."); *Ragsdale v. State*, 720 So. 2d 203, 207 (Fla. 1998) ("A summary or conclusory allegation is insufficient to allow the trial court to examine the specific allegations against the record."). A "defendant may not simply file a motion for postconviction relief containing conclusory allegations and then expect to receive an evidentiary hearing." *Foster v. State*, 132 So. 3d 40, 71 (Fla. 2013) (cleaned up).

The instant claim is facially insufficient because Doty did not set forth specific allegations of ineffectiveness, nor did Doty allege prejudice. First, Doty did not allege with specificity anything that his trial counsel did or did not do that would have amounted to deficient performance. To satisfy the deficiency prong, Doty was required to show that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. *Sochor v. State,* 883 So. 2d 766, 771 (Fla. 2004). The burden was on Doty to "identify particular acts or omissions of the lawyer that are shown to be outside the broad range of reasonably competent performance under prevailing professional standards."

Merck v. State, 124 So. 3d 785, 793 (Fla. 2013). There is a strong presumption that trial counsel's performance was not deficient. *Id.* (citing *Strickland*, 466 U.S. at 690). And general complaints about lack of communication are insufficient to establish deficient performance. *Figueroa-Sanabria v. State*, 366 So. 3d 1035, 1048 (Fla. 2023).

Doty never specified what his attorney failed to do that would have developed rapport and trust with him, and how that failure amounted to action outside of the broad range of competent performance. *See Hilton v. State*, 326 So. 3d 640, 650 (Fla. 2021) (finding allegations of deficient performance insufficient to satisfy *Strickland* where Hilton did not link his general allegations to the outcome of the case). Nor has Doty alleged with specificity how he was actually prejudiced by his counsel's alleged deficiency.

"To establish prejudice, the defendant must demonstrate there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Ellerbee v. State*, 232 So. 3d 909, 918 (Fla. 2017) (cleaned up). Doty's claim is based entirely on speculation. Doty chose to represent himself during his original penalty phase and again during his

resentencing proceeding. He made numerous affirmations on the record of his intent to represent himself, with acknowledgments that he understood his right to an attorney as well as the advantages and disadvantages of representing himself.

Doty's assertion that "it is possible he would not have opted to represent himself" is much too tenuous to establish any such resulting prejudice. *McKenzie v. State*, 153 So. 3d 867, 876 (Fla. 2014) (rejecting claim that defendant was prejudiced by counsels' failure to visit him, and that he would not have elected to represent himself had such visits occurred); *Dennis v. State*, 109 So. 3d 680, 692 (Fla. 2012) (ineffective assistance claim facially insufficient that did not allege prejudice with specificity); *see also Steinhorst v. State*, 498 So. 2d 414, 414–15 (Fla. 1986) (a postconviction motion may be summarily denied when it "lacks any substantial factual allegations, or where the facts alleged, even if true, would not render the judgment vulnerable to collateral attack.").

Doty "was unequivocal in his intent to represent himself" and his decision to do so was knowing, voluntarily, and intelligently made. "Appellant was the architect of his defense at trial." *Goode v. State*, 403 So. 2d 931, 933 (Fla. 1981). Doty cannot claim that his

trial counsel was deficient for decisions he made in conducting his defense during the penalty phase. *Lamarca v. State,* 931 So. 2d 838, 850 (Fla. 2006). Any ill-advised decisions Doty made while he represented himself does not establish that he is entitled to a "do-over" of his penalty phase or any phase of his underlying trial. *McKenzie v. State*, 153 So. 3d 867, 884 (Fla. 2014).

Doty further claims that his standby counsel was ineffective for failing to investigate and present mitigation to the trial court. As this Court has recognized, "A defendant who represents himself has the entire responsibility for his own defense, even if he has standby counsel. Such a defendant cannot thereafter complain that the quality of his defense was a denial of 'effective assistance of counsel.'" *Barnes v. State*, 124 So. 3d 904, 917 (Fla. 2013) (cleaned up). Given that Doty waived his right to counsel, it was improper for him to later complain that his standby counsel was ineffective. *Barnes*, 124 So. 3d at 917; *Goode*, 403 So. 2d at 933; *Lamarca,* 931 So. 2d at 850.

Additionally, because Doty presented mitigation evidence, *Muhammad*[4] did not apply to his case. *See Bell v. State,* 336 So. 3d

[4] *Muhammad v. State*, 782 So. 2d 343 (Fla. 2001).

211, 217 (Fla. 2022) (explaining that where a defendant does not waive the right to present mitigation, *Muhammad's* investigative procedures do not apply). Doty's ineffective assistance of counsel claims are legally insufficient, and the postconviction court's summary denial requires affirmance.

ISSUE VII

IT WAS PROPER FOR THE POSTCONVICTION COURT TO DENY DOTY'S POSTCONVICTION CLAIMS WITHOUT CONDUCTING AN EVIDENTIARY HEARING WHEN ALL OF THE CLAIMS ARE PROCEDURALLY BARRED, LEGALLY INSUFFICIENT, AND/OR REFUTED BY THE RECORD.

In his last claim, Doty argues that the trial court unfairly denied him of a postconviction evidentiary hearing in violation of his Constitutional rights. The trial court's summary denial of Doty's motion was appropriate under the circumstances, and Doty is not entitled to relief.

This Court has a long-time policy establishing a presumption in favor of holding evidentiary hearings on capital postconviction motions. *Rivera v. State*, 995 So. 2d 191, 195 n. 2 (Fla. 2008). A defendant is entitled to an evidentiary hearing when he makes a facially sufficient claim that requires factual determination. *Tanzi v.*

State, 94 So. 3d 482, 493 (Fla. 2012). "Postconviction claims may be summarily denied when they are legally insufficient, should have been brought on direct appeal, or are positively refuted by the record." *Owen v. State*, 986 So. 2d 534, 543 (Fla. 2008). This Court reviews a lower court's decision on whether to grant an evidentiary hearing under the de novo standard of review. *Tanzi*, 94 So. 3d at 493.

Here, Doty is not entitled to relief because nearly all of his postconviction claims are procedurally barred for not having been raised on direct appeal of his resentencing. In addition, Doty's claims are legally insufficient and the written materials before the court established that Doty was not entitled to relief on his claims. The postconviction court set forth a detailed order explaining how the record refuted Doty's claims and why Doty was not entitled to relief. (PCR 1307-1331).

The postconviction court did not err in denying Doty's claims without an evidentiary hearing. *See Tanzi*, 94 So. 3d 493 (finding no error and affirming the summary denial of postconviction claims that were either facially insufficient, procedurally barred, or without merit); *Tompkins v. State*, 994 So. 2d 1082 (Fla. 2008) (finding no

error in the summary denial of various postconviction claims, including one that was procedurally barred); *see also McKenzie v. State*, 153 So. 3d 867, 884 (Fla. 2014) (because there was no error by the postconviction court, the claim of cumulative error fails). This Court should affirm the summary denial of relief.

CONCLUSION

Wherefore, the State respectfully requests that this Honorable Court affirm the lower court's denial of postconviction relief as well as the court's denial of Doty's motion for PET scan and MRI.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March 2024, I electronically filed the foregoing with the Clerk of the Court by using the e-filing portal system which will send a notice of electronic filing to the following: Julissa Fontan, and Teresa Hall, Assistants CCRC-M, Office of the Capital Collateral Regional Counsel-Middle, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **fontan@ccmr.state.fl.us, hall@ccmr.state.fl.us, support@ccmr.state.fl.us.**

/s/ Christina Z. Pacheco__
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CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND TYPE STYLE REQUIREMENTS

I HEREBY CERTIFY that this document complies with the typeface requirements of Fla. R. App. P. 9.045 because this document has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14-point Bookman Old Style and is 8363 words.

/s/ Christina Z. Pacheco__
COUNSEL FOR APPELLEE