Filing # 197075048 E-Filed 04/26/2024 11:46:15 AM

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2023-1123
L.T. NO. 042011CF000498CFAXMX

WAYNE C. DOTY

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

REPLY BRIEF OF APPELLANT

Teresa A. Hall
FBN: 1002767
Julissa R. Fontán
FBN: 0032744
Capital Collateral Regional
Counsel-Middle
12973 N. Telecom Parkway
Temple Terrace, FL 33637
Telephone: (813) 558-1600
hall@ccmr.state.fl.us
fontan@ccmr.state.fl.us
support@ccmr.state.fl.us

Counsel for Appellant

TABLE OF CONTENTS

CONTENTS **PAGE(S)**

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES ..... iii, iv

PRELIMINARY STATEMENT AND ARGUMENTS 1

Argument I: FUNDAMENTAL ERROR OCCURRED WHEN THE TRIAL COURT ERRED IN SUMMARILY DENYING THE DEFENDANT'S CLAIM BASED ON *GIGLIO*, AND *NAPUE* IN WHICH THE STATE USED FALSE AND MISLEADING EVIDENCE AT TRIAL WHICH VIOLATED THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION. 1

Argument II: THE TRIAL COURT ERRED WHEN IT DENIED DOTY'S MOTION FOR A PET AND MRI SCAN, PREVENTING MR. DOTY FROM MAKING A COGNIZABLE CLAIM AS TO WHETHER MR. DOTY SHOULD HAVE BEEN ALLOWED TO REPRESENT HIMSELF. 5

Argument III: STANDBY COUNSEL WAS INEFFECTIVE FOR NOT ASSISTING WITH THE DEVELOPMENT OF MITIGATION PERTAINING TO ORGANIC BRAIN DAMAGE, THUS VIOLATING MR. DOTY'S DUE PROCESS RIGHTS UNDER THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND THE CORRESPONDING ARTICLES OF THE FLORIDA CONSTITUTION. 12

Argument IV: THE TRIAL COURT COMMITTED FUNDAMENTAL ERROR WHEN IT SUMMARILY DENIED MR. DOTY'S 3.851 PETITION FOR RELIEF WITHOUT A HEARING ON THE CUMULATIVE ERRORS COMMITTED DURING THE RESENTENCING CONCLUSION 16

CONCLUSION AND RELIEF SOUGHT 17

CERTIFICATE OF SERVICE 19

CERTIFICATE OF COMPLIANCE 20

TABLE OF AUTHORITIES

Cases **Page(s)**

Card v. State, 803 So. 2d 613, 622 (Fla. 2001) 3

Dailey v. State, 329 So. 3d 1280, 1284 (Fla. 2021) 5

Davis v. State, 26 So. 3d 519, 526, 532 (Fla. 2009) 2, 16

Everett v. State, 54 So. 3d 464, 485 (Fla. 2010) 10

Farr I, 621 So. 2d 1368, 1369 (Fla. 1993) 11

Ferrell v. State, 918 So. 2d 163 (Fla. 2005) 8

Floyd v. State, 850 So. 2d 383, 403 (Fla. 2002) 16

Giglio v. U.S.(1972) 1, 2, 3, 4, 5

Gregg v. Georgia, 428 U.S. 153, 190 (1976) 6, 14

Guzman v. State, 941 So. 2d 1045, 1050 (Fla. 2006) 2, 3

Hojan v. State, 212 So. 3d 982, 988 (Fla. 2017) 17

Hoskins v. State, 702 So. 2d 202 (Fla. 1997) 11

Huff v. State, 622 So. 2d 982 (Fla. 1993) 6

Indiana v. Edwards, 554 U.S. 164, 176 (2008) 5

Johnson v. State, 128 So. 3d 155 (Fla. 2nd DCA 2013) 3, 4

Muhammad v. State, 782 So. 2d 343, 363 (Fla. 2001) 11, 12, 13

Napue v. Illinois, 360 U.S. 264 (1959) 1

Porter v. McCollum, 130 S. Ct. 447, 452 (2009) 6

Rogers v. State, 327 So. 3d 874, 887 (Fla. 2021) 17

Sears v. Upton, 561 U.S. 945 (2010) 10, 13, 14

Smith v. State, 445 So. 2d 323, 325 (Fla. 1983) 16

Sochor v. State, 619 So. 2d 285, 290 (Fla. 1993) 3

Strickler v. Greene, 527 U.S. at 290 (1995) 5

Sumner v. Shuman, 483 U.S. 66, 72 (1987) 6

United States v. Barrett, 985 F. 2d 1203, 1222 (10th Cir. 2021) 9

Walton v. State, 847 So. 2d 438, 439 (Fla. 2003) 5

Florida Rules of Procedure **Page(s)**

Florida Rules of Appellate Procedure 9.045 & 9.210 20

Florida Rules of Criminal Procedure 3.851 ..... 15, 16, 17

Florida Rules of Criminal Procedure 3.852 16

Florida Rules of Criminal Procedure 3.993 16

Florida Rule of Judicial Admin. 2.050 16

Constitutional Provisions **Page(s)**

FLORIDA CONSTITUTION ARTICLE 12, 18

U.S. CONST. AMEND. V 1, 3, 15, 17

U.S. CONST. AMEND. VI 1, 3, 12, 15, 16, 17

U.S. CONST. AMEND. VIII 1, 3, 12, 15, 16, 17

U.S. CONST. AMEND. XIV 1, 3, 12, 16, 17

PRELIMINARY STATEMENT AND ARGUMENTS

The Appellant, Wayne C. Doty, relies on the arguments presented in the Initial Brief of the Appellant ("Initial Brief" or IB), and offers the following reply to the State's Answer Brief of Appellee (Answer Brief or AB) dated March 20, 2024. While Mr. Doty will not reply to every issue and argument raised by the State, he expressly does not abandon the issues not specifically replied to herein and incorporates them by reference.

Citations shall be as follows: Page references to the record on appeal for the second sentencing proceeding in case number 05-2009-CF-31876-A (SC 18-973) are designated with "R and page number". The post-conviction record on appeal shall be referred to as "PC" followed by the appropriate volume and page numbers. All other references will be self-explanatory or otherwise explained herein.

ARGUMENT I: FUNDAMENTAL ERROR OCCURRED WHEN THE TRIAL COURT ERRED IN SUMMARILY DENYING THE DEFENDANT'S CLAIM BASED ON *GIGLIO*, AND *NAPUE* IN WHICH THE STATE USED FALSE AND MISLEADING EVIDENCE AT TRIAL WHICH VIOLATED THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Fundamental error occurred when the trial court summarily denied Mr. Doty's post-conviction claim pertaining to the State's *Giglio* violations. In this case, Mr. Doty's substantive due process rights were violated by not allowing

an evidentiary hearing pertaining to the false and misleading testimony committed by state witness Kevin Snow. Over time, Mr. Snow's testimony in Mr. Doty's cases (initial trial, resentencing and co-defendant William Wells' trial) significantly changed and was false. (IB 14-16) Mr. Snow's testimony was markedly more severe and damning in Mr. Doty's resentence. In essence, Mr. Snow was allowed to continue with his false and incorrect narrative even though the state was aware that the testimony was drastically different from either Mr. Doty's original trial and/or the co-defendant's trial.

A *Giglio* violation is demonstrated when (1) the prosecutor presented or failed to correct false testimony; (2) the prosecutor knew the testimony was false; and (3) the false evidence was material. See *Guzman v. State*, 941 So. 2d 1045, 1050 (Fla. 2006)). Once the first two prongs are established, the false evidence is deemed material if there is any reasonable possibility that it could have affected the jury's verdict. *Guzman* at 1050-51. Under this standard, the State has the burden to prove that the false testimony was not material by demonstrating it was harmless beyond a reasonable doubt. *Davis v. State*, 26 So. 3d 519, 532 (Fla. 2009). In Mr. Doty's case the denial of Mr. Doty's postconviction claims is premature. To prevent a fundamental error, the trial court should have granted an evidentiary hearing to determine if the *Giglio* violation occurred and if the

defense met its burden under *Guzman*. Because the trial court summarily denied the *Giglio* violation claim, Mr. Doty's fundamental due process rights have been violated under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding Articles under the Florida Constitution.

Fundamental error has been described as "error that reaches down into the validity of the trial itself to the extent that a verdict of guilty or jury recommendation of death could not have been obtained without the assistance of the alleged error." *Card v. State*, 803 So. 2d 613, 622 (Fla. 2001). Also, a fundamental error is described as one "where the interests of justice present a compelling demand for its application." *Sochor v. State*, 619 So. 2d 285, 290 (Fla. 1993).

In the State's answer brief, the argument is made that Appellant did not provide any case law to support a fundamental due process error. (AB 10-11). This is simply incorrect. The State contends that the issue is procedurally barred. As denoted in *Johnson v. State*, 128 So. 3d 155 (Fla. 2nd DCA 2013), the trial court erred by denying a *Giglio* claim based on whether it was procedurally barred, and the case was remanded for an evidentiary hearing. "A claim alleging the denial of a defendant's substantive due process rights may be raised at any time, including for the first time in

a motion for postconviction relief." *Id.* at 156. The *Johnson* Court went on to elaborate further about substantive due process rights:

> Here, while Johnson could have raised his *Giglio* claim on direct appeal, he did not. Under this court's decision in *Robinson*, Johnson's failure to raise this claim on direct appeal does not render it procedurally barred. And because the claim alleges a violation of Johnson's substantive due process rights that would otherwise be cognizable under rule 3.850(a)(1), the postconviction court should have considered the claim on its merits even though it was raised for a first time in Johnson's postconviction motion."

Id. at 156.

The State also argues in their answer brief that Mr. Doty would not be entitled to relief even if a hearing had taken place on the *Giglio* violation claim. (AB12). Again, the State is getting the cart before the horse. If an evidentiary hearing had taken place, Mr. Doty would have presented evidence that the testimony by Mr. Snow was false and misleading and that the prosecutor would have known the testimony was false. Mr. Snow's changed testimony is not just a change in description or a change in interpretation of the facts. Instead, Mr. Snow's testimony implicates Mr. Doty's part in the murder in a different and more significant manner than in the first trial, or in the co-defendant's trial. The facts changed so dramatically as to implicate Mr. Doty as the mastermind and over-emphasized Mr. Doty's role in the murder. (IB 16). This changed testimony was false and misleading and very likely led to Mr. Doty being sentenced to death.

As to the third prong for a *Giglio* violation, it is quite evident that the testimony of Mr. Snow was material. Evidence is material if it places "the whole case in such a different light as to undermine confidence in the verdict." *Walton v. State*, 847 So. 2d 438 (Fla. 2003) (quoting *Strickler v. Greene*, 527 U.S. at 290 (1995).)

The State relied upon the testimony quite heavily in its sentencing argument. Mr. Snow was a critical state witness. Evidence was admitted through Mr. Snow, including Mr. Doty's statement and confession. The State is correct in that 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. *Dailey v. State*, 329 So. 3d 1280, 1284 (Fla. 2021). The facts are not clearly rebutted by the record; thus the trial court should have granted an evidentiary hearing as to this claim.

As to Issue one, Mr. Doty is requesting an evidentiary hearing so that the trial court may determine if there was a *Giglio* violation that took place.

ARGUMENT II: THE TRIAL COURT ERRED WHEN IT DENIED DOTY'S MOTION FOR A PET AND MRI SCAN, PREVENTING MR. DOTY FROM MAKING A COGNIZABLE CLAIM AS TO WHETHER MR. DOTY SHOULD HAVE BEEN ALLOWED TO REPRESENT HIMSELF.

In *Indiana v. Edwards*, 554 U.S. 164, 176 (2008), the United States found that "disorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety and other common

symptoms of severe mental illness can impair the defendant's ability to play the significantly expanded role of self-representation even if he can play the lesser role of represented defendant." The United States Supreme Court has recognized that the penalty phase of a capital trial necessitates a "heightened reliability" that is "demanded by the Eighth Amendment." *Sumner v. Shuman*, 483 U.S. 66, 72 (1987).

Further, the United States Supreme Court held that "accurate sentencing information is an indispensable prerequisite to a reasoned determination of whether a defendant shall live or die [made] by a jury of people who may have never made a sentencing decision." *Gregg v. Georgia*, 428 U.S. 153, 190 (1976) (plurality opinion). The focus in penalty proceedings should be on "the particularized characteristics of the individual defendant." *Id.* at 206. Individualizing a defendant requires a thorough investigation into the defendant's background. *Porter v. McCollum*, 130 S. Ct. 447, 452 (2009).

Prior to the *Huff*[1] hearing in Mr. Doty's case, the defense submitted a report authored by Dr. Valerie McClain (PC: 1283). Dr. McClain evaluated Mr. Doty and determined that due to a split between his verbal comprehension and perceptual reasoning, there is an indication that Mr. Doty

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1993)

has damage to his front left temporal lobe. (PC 1283). Dr. McClain determined that Mr. Doty has limited meaningful understanding of the outcome of his actions and choices. (PC: 1285).

Dr. McClain's diagnosis is proven through the actions of Mr. Doty during his resentencing trial. For example, when Mr. Doty called his father (Randy Doty) to the stand, Mr. Doty was unable to conduct the questioning and utilized his stand-by counsel instead (R: 2511, page 173 of trial transcript). Then on re-direct for Randy Doty, the appellant, Wayne Doty asked questions of his father. During re-direct it was clearly evident that the appellant, Mr. Doty was agitated, impulsive and unable to maintain focus (R: 2543-2549; trial transcript page 211). Lastly, it is clear that Mr. Doty was not acting rational during the re-direct questioning of his father because in the presence of the jury and Judge, Mr. Doty stated that he should have killed his father. (R: 2549, trial transcript 211) This is not a rational mind and clearly there are mental health reasons and processing defects that support Dr. McClains' findings.

Dr. McClain's findings are also supported by a second mental health expert, Dr. Michael Maher. As denoted in Dr. Maher's affidavit to the trial court (R: 435), he is a licensed physician and is board certified in Psychiatry from the American Board of Psychiatry and Neurology. In Dr. Maher's review

of Mr. Doty's records, Dr. Maher expresses concern that there is brain damage that has not been diagnosed (R: 435). Lastly Dr. Maher opines that there is a need for PET and MRI testing to complete a full mental evaluation and diagnosis of Mr. Doty (R: 436).

It is abundantly clear that there was undiagnosed mental illness for Mr. Doty by his actions within the courtroom during his resentencing. It is also clear from the resentencing transcript that the trial court did not have a complete picture of the significant mental health issues that existed for Mr. Doty. A complete picture would only occur if the trial court had granted the defense's request to conduct a PET/MRI scan during the post-conviction proceedings. But instead of ordering the exam and allowing postconviction counsel to hire the appropriate expert to explain the results, the trial court summarily denied Mr. Doty's claim.

This Court, in *Ferrell v. State*, 918 So. 2d 163 (Fla. 2005) established the following guidelines for evaluating a claim relating to the denial of a diagnostic test:

> (1) the defendant must establish a particularized need for the test, that is, that the test is necessary for experts to make a more definitive determination as to whether the defendant's brain is functioning properly and to provide their opinions about the extent of the defendant's brain damage; and (2) this Court must consider whether the defendant was prejudiced by the trial court's denial of the motion requesting a scan."

Ferrell at 176.

Diagnosis of specific mental illness are particularly mitigating because "the involuntary physical alteration of brain structures . . . tends to diminish moral culpability, altering the causal relationship between impulse and action." *United States v. Barrett*, 985 F. 2d 1203, 1222 (10th Cir. 2021).

In Mr. Doty's resentencing, the Court appointed Dr. Harry Krop to perform evaluations of Mr. Doty and to assisting with recognizing any mitigating factors that might exist. Previously, in 2012 and 2016, Dr. Krop had also evaluated Mr. Doty for competency to proceed *pro se*, finding Mr. Doty competent in both evaluations. (R: 560). However, Dr. Krop, as well as Dr. McClain, are not able to diagnose organic brain damage. A neurologist or neuroradiologist is needed for this diagnosis. Dr. McClain recognized that her expertise would not be able to definitively determine what kind of brain damage Mr. Doty had but did recognize that the PET scan should be conducted and an expert retained to evaluate said PET scan. By appointing Dr. Krop, who is a clinical psychologist, not a psychiatrist or neuropsychiatrist, the trial court only had a partial picture of the potential mitigation. Without the PET/MRI scans, the trial court could not have a full understanding of the mitigation that should have been presented to the jury.

Mr. Doty has striking similarities with Sears in *Sears v. Upton*, 561 U.S. 945 (2010.) Mr. Sears suffered frontal lobe brain damage from physical injuries as well as alcohol and drugs used in his teens. *Id*. at 946. Further, Mr. Sears suffered physical abuse between his parents and was neglected by the various disciplinary drills that the father imposed upon Sears. *Id.* at 946. Lastly, Sears exhibited substantial behavior problems starting at a young age. *Id*. at 946. Mr. Doty also suffered from physical trauma to the head on multiple occasions (R: 1283), watched his father physically abuse at least three (3) of the mother figures Mr. Doty had in his life (R: 2402 (62 of trial transcript)); (R: 2434 (96 of trial transcript)); (R: 2497 (159 of trial transcript)), used drugs and alcohol starting at a young age (R: 386, 561), had behavioral problems starting at the age of twelve (R: 385), was verbally abused by his father (R: 384) and was neglected and physically abused by one of his step-mothers (R: 2503 (165 of the trial transcript)).

"To uphold the trial court's summary denial of claims raised in an initial postconviction motion, the record must conclusively demonstrate that the defendant is not entitled to relief." *Everett v. State*, 54 So. 3d 464, 485 (Fla. 2010).

This Court has repeatedly emphasized the duty of the trial court to consider all mitigating evidence "contained anywhere in the record, to the

extent it is believable and uncontroverted." *Muhammad v. State*, 782 So. 2d 343, 363 (Fla. 2001) This requirement "applies with no less force when a defendant argues in favor of the death penalty, and even if the defendant asks the court not to consider mitigating evidence." *Farr I*, 621 So. 2d 1368, 1369 (Fla. 1993).

A complete mitigation evaluation of Mr. Doty did not occur at the trial level. Because Dr. Krop was appointed by the trial court, the trial court erred when it did not order a PET scan to further explain whether Mr. Doty had organic brain damage. The mitigation performed by Dr. Krop was deficit and incomplete. The facts and reports admitted in the resentencing hearing, as well as by post-conviction counsel, clearly indicates that further testing should be completed to determine what mitigation actually exists. In Mr. Doty's case, postconviction counsel has presented disputed facts to demonstrate a PET scan was necessary to the expert's proper evaluation of the defendant. See *Hoskins v. State*, 702 So. 2d 202 (Fla. 1997) (Anstead, J. concurring in part and dissenting in part). In *Hoskins,* this Court remanded the case to the trial court to order a PET scan and determine whether the results of that test showed an "abnormality and if so whether the results altered the expert's trial testimony." *Hoskins* at 210. The same should be done in Mr. Doty's case.

The denial of the postconviction motion violates Mr. Doty's substantive due process rights under the Sixth, Eighth and Fourteenth Amendments of the United States Constitution, as well as the corresponding Articles of the Florida Constitution.

ARGUMENT III: STANDBY COUNSEL WAS INEFFECTIVE FOR NOT ASSISTING WITH THE DEVELOPMENT OF MITIGATION PERTAINING TO ORGANIC BRAIN DAMAGE, THUS VIOLATING MR. DOTY'S DUE PROCESS RIGHTS UNDER THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND THE CORRESPONDING ARTICLES OF THE FLORIDA CONSTITUTION.

In *Muhammad v. State*, 782 So. 2d 343 (Fla. 2001) the trial court appointed standby counsel to assist with mitigation. Muhammad did not present any mitigation during the penalty phase of the trial. Instead, the trial court requested a presentence investigation report and used this report to determine if mitigating factors existed. *Id*. at 350. Unlike in *Muhammad*, Mr. Doty did present mitigation evidence. Mr. Doty had standby counsel participate in the defense's case in chief by questioning a key witness for mitigation purposes. Standby counsel that was appointed did not merely assist with ministerial work or deal with procedural issues. Standby counsel actively participated in the case in chief for the defense. The trial court recognized this repeatedly by questioning Mr. Doty if he would like standby counsel to step in (R: 2530-2531, trial transcript page 212-213). Standby

counsel in Mr. Doty's case was ready and did participate in the development of mitigation and thus was responsible for deficiencies that were not developed.

However, standby counsel was deficient when standby counsel did not seek a complete evaluation of all mitigation possible. Standby counsel would have been aware of Mr. Doty's previous head injuries as well as the other factors that resembled the defendant in *Sears v. Upton*, 561 U.S. 945 (2010.) Instead, standby counsel did nothing to request a brain scan or to evaluate whether organic brain damage existed. As denoted in Justice Pariente's concurring opinion in *Muhammad*, standby counsel "does little to advance the fairness and reliability of the proceedings." *Muhammad* at 372 (Pariente, J concurring).

In *Sears v. Upton*, 561 U.S. 945 (2010), the Court granted relief based on ineffective assistance of counsel even though counsel had presented some mitigation. The Court stated:

> We certainly have never held that counsel's effort to present some mitigation evidence should foreclose an inquiry into whether a facially deficient mitigation investigation might have prejudiced the defendant. To the contrary, we have consistently explained that the *Strickland* inquiry requires precisely the type of probing and fact-specific analysist that the state trial court failed to undertake below. In the *Williams* decision, for instance, we categorically rejected the type of truncated prejudice inquiry undertaken by the state court in this case. 529 U.S. at 397-98. And in *Porter*, we recently explained:

> To assess [the] probability [of a different outcome under *Strickland*], we consider the totality of the available mitigation evidence-both that adduced at trial, and the mitigation evidence-both that adduced at trial, and the evidence adduced in the habeas proceeding-and evidence adduced in the habeas proceeding-and reweigh it against the evidence in aggravation." 558 U.S. at U.S. at 397-98. A proper analysis of prejudice under Strickland would have taken into account the newly uncovered evidence of Sear's "significant" mental and psychological impairments, along with the mitigation evidence introduced during Sears' penalty phase trial, to assess whether there is a reasonable probability that Sears would have received a different sentence after a constitutionally sufficient mitigation investigation.

Id. at 955-56.

If an evidentiary hearing had been held, the trial court would have received information concerning Mr. Doty's mitigation and how the information would have likely changed the outcome of Mr. Doty's trial. Evidence would have been presented to show that standby counsel was deficient by failing to conduct a reasonably competent mitigation investigation. "Accurate sentencing information is an indispensable prerequisite to a reasoned determination of whether a defendant shall live or die [made] by a jury of people who may have never made a sentencing decision." *Gregg v. Georgia*, 428 U.S. 153, 190 (1976) (plurality opinion). Thus, it is imperative to obtain a complete and accurate portrait of a capital defendant's life.

If an evidentiary hearing had been granted for Mr. Doty's 3.851 claims, the trial court would have heard testimony from Doctor Valerie McClain. Doctor McClain reviewed Mr. Doty's medical records, including jail and prison records. Doctor McClain also personally conducted a neuropsychological evaluation.[2] Further, post-conviction defense filed a written motion requesting approval for a PET/MRI examination of Mr. Doty so that Doctor McClain could complete her evaluation. (PC 424). The trial court denied the motion. (PC 1297).

Even without the complete neuropsychological examination by Doctor McClain, Doctor McClain surmised several mental health issues, as well as likely frontal lobe damage to his brain. Doctor McClain opined that Mr. Doty struggled with verbal comprehension and perceptual reasoning. (PC 1283). Doctor McClain also found that Mr. Doty had short-term memory issues with seemed to exacerbate the other mental health issues that were found to exist. Because defense trial standby counsel was wholly ineffective on gathering any mitigation evidence, and because the trial court has summarily denied this claim, Mr. Doty's due process rights under the Fifth, Sixth, Eighth

[2] Doctor McClain's complete neuropsychological assessment of Mr. Doty could not be completed because the trial court denied defense's motion for a PET/MRI scan.

and Fourteenth Amendments of the United States Constitution have been violated.

Lastly, the trial court erred when it ruled that the claims were procedurally barred because "issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." (PC 1316), citing *Smith v. State,* 445 So. 2d 323, 325 (Fla. 1983). However, the trial court has erred because the standard should be viewed as to whether a fundamental error has occurred. "Fundamental error is that which 'reaches down into the validity of the trial itself to the extent that a verdict . . . could not have been obtained without [that] error." *Floyd v. State*, 850 So. 2d 383, 403 (Fla. 2002). The errors relating to the deficiencies of standby counsel rise to fundamental error which violates Mr. Doty's due process rights under the United States Constitution Amendments, VI, VIII and XIV, thus requiring an evidentiary hearing on these issues.

ARGUMENT IV: THE TRIAL COURT COMMITTED FUNDAMENTAL ERROR WHEN IT SUMMARILY DENIED MR. DOTY'S 3.851 PETITION FOR RELIEF WITHOUT A HEARING ON THE CUMULATIVE ERRORS COMMITTED DURING THE RESENTENCING.

This Court has encouraged trial courts "to liberally allow" evidentiary hearings on Rule 3.851 motions. Amendments to Fla. Rules of Criminal Procedure, 3.851, 3.852, * 3.993 & Fla. Rule of Judicial Admin 2.050 and *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2009) ("This Court is guided by the

principle that courts are encouraged to liberally view the allegations to allow evidentiary hearings on timely raised claims that commonly require a hearing.") "A circuit court should hold an evidentiary hearing on a rule 3.851 motion 'whenever the movant makes a facially sufficient claim that requires a factual determination.'" *Rogers v. State*, 327 So. 3d 874, 887 (Fla. 2021). See also *Hojan v. State*, 212 So. 3d 982, 988 (Fla. 2017) (there is a presumption that claims of relief sought in a rule 3.851 motion are presumptively entitled to a postconviction evidentiary hearing).

In Mr. Doty's case, the appellant has made facially sufficient claims through his initial brief and this reply brief to support the need for an evidentiary hearing on the merits of Mr. Doty's claims. Because there has been no evidentiary hearing, an analysis of the claims set forth cannot be complete. The denial of the postconviction claims by Mr. Doty, without an evidentiary hearing violate Mr. Doty's due process rights through the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the corresponding Articles of the Florida Constitution.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing, the trial court improperly summarily denied Mr. Doty's initial 3.851 motion. This Court should, at a minimum, remand and order the trial court to hold a full evidentiary hearing on Mr. Doty's claims as

set forth in the initial and reply brief by the appellant. This Court should allow Mr. Doty the full opportunity to put forth his evidence in support of his claim. This Court should remand to the circuit court to allow Mr. Doty to present his evidence at an evidentiary hearing.

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing Brief has been electronically filed with the Clerk of the Florida Supreme Court, and electronically served upon Senior Assistant Attorney General, Christina Pacheco, (Christina.Pacheco@myfloridalegal.com, heather.davidson@myfloridalegal.com, paula.montlary@myfloridalegal.com, capapp@myfloridalegal.com) on 26th day of April, 2024.

/s/ Teresa A. Hall
Teresa A. Hall
Florida Bar No. 1002767
Assistant Capital Collateral Counsel
Capital Collateral Counsel-Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637
813-558-1600
hall@ccmr.state.fl.us
support@ccmr.state.fl.us

/s/ Julissa R. Fontán
Julissa R. Fontán
Florida Bar No. 0032744
Assistant Capital Collateral Counsel
Capital Collateral Counsel-Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637
813-558-1600
fontan@ccmr.state.fl.us

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing was generated in Arial 14-point font with a word count of 3976 and otherwise formatted in compliance with Florida Rules of Appellate Procedure 9.045 and 9.210, and the Florida Supreme Court's Scheduling Order.

/s/ Teresa A. Hall
Teresa A. Hall
Florida Bar No. 1002767
Assistant Capital Collateral Counsel
Capital Collateral Counsel-Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637
813-558-1600
hall@ccmr.state.fl.us
support@ccmr.state.fl.us