

IN THE SUPREME COURT OF FLORIDA

Case No. SC2023-1501
Lower Case No. 18000667CFAXMX

ROBERT EARL LEE CRAFT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

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

INITIAL BRIEF OF APPELLANT

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REQUEST FOR ORAL ARGUMENT

In this capital case, Robert Earl Lee Craft appeals the circuit court's denial of his Motion to Vacate Judgements of Conviction and Sentence, filed pursuant to Fla. R. Crim. P. 3.851. Counsel for the Appellant respectfully requests the opportunity to present oral argument. This is a capital case, the resolution of the issues presented will determine whether Mr. Everett will live or die, and a complete understanding of the complex factual, legal, and procedural history of this case is critical to the proper disposition of this appeal.

CITATIONS TO THE RECORD

Citations to the record on appeal in this case are designated as "ROA. ." References to the transcript from Appellant's *Faretta* and change of plea hearing are designated as "FH. ." References to the transcript from Appellant's penalty phase bench trial are designated as "PP. ." References to the transcript from Appellant's Spencer hearing are designated as "SH. ." References to the record on direct appeal are designated as "DA-R. ." All other references are self-explanatory or otherwise explained herewith.

STATEMENT OF THE CASE AND FACTS

A. Procedural History

On October 1, 2018, Mr. Craft was indicted for first-degree murder. (DA-R. 10). On January 7, 2019, Mr. Craft filed a Motion for a Faretta Hearing and Recusal of Counsel. (DA-R. 26-47). A hearing on the motion was held January 23, 2019, during which Mr. Craft indicated a desire to discharge court appointed counsel, waive his right to a jury trial, and receive a death sentence. The Court deferred ruling on the motion until Mr. Craft's competency could be determined and appointed two experts for the competency evaluation. (DA-R. 57-60). The two experts evaluated Mr. Craft in tandem on March 25, 2019. (ROA. 271).

A case status review and change of plea hearing was held on March 27, 2019. (FH. 1). Based on the experts' evaluations and no objection from Mr. Craft, despite his not reviewing the reports, the Court found Craft competent to proceed. (FH. 7-8). Without first swearing in Mr. Craft, the Court conducted a *Faretta*¹ inquiry. (FH. 9-32). The Court concluded Mr. Craft was competent to represent

¹ *Faretta v. California*, 422 U.S. 806 (1975).

himself and appointed standby counsel. (FH. 35). Trial counsel advised the Court that Craft wanted his case resolved as fast as possible and wished to plead guilty. (FH. 36).

Without placing Mr. Craft under oath, as required by Fla. R. Crim. P. 3.172(c), the Court conducted a plea colloquy. The Court accepted the guilty plea. (FH. 69-70). Mr. Craft waived his right to a jury and a bench trial on the penalty phase was held on May 13, 2019. (FH. 54; PP 1). Though Mr. Craft had advised the Court he wished to waive mitigation, several of his family members had appeared at the trial. Mr. Craft told the Court that if they wished to speak, he wanted them to be permitted to speak for their conscience purpose. (PP. 82).

Following his family's testimony, Mr. Craft advised the Court that he thought his case was going to be easy and his mind was made up. The reason he pled guilty to avoid trial is because he did not want his family to go through the pain of testifying about his and their family's background. He wanted death because he goes through the pain they were going through on the stand, and much more, every day. (PP. 98-100).

A joint *Spencer*² hearing and sentencing were held on June 7, 2019. The Court found four aggravators: under sentence of imprisonment; prior violent felony; especially heinous, atrocious and cruel; and cold, calculated and premeditated. The Court found four mitigators: traumatic childhood; close family ties; likely suffers from a number of mental health disorders that have negatively impacted him; and Craft exhibited good behavior in trial. (SH. 9-10). The Court sentenced Craft to death. (SH. 11).

After some discussions about Mr. Craft's right to appeal his judgment and sentence and the automatic review process for death penalty cases, Craft advised the Court that he wished to talk with standby counsel because he wanted to understand more about it. (SH. 13-14).

This Court affirmed the judgment and sentence in an opinion dated November 19, 2020. *Craft v. State*, 312 So. 3d 45 (Fla. 2020). Capital Collateral Counsel-North was appointed on March 22, 2021. (R. 52-53).

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

Rule 3.851 Proceedings

CCRC-North filed its Rule 3.851 motion to vacate on November 15, 2022. (R. 202-387). Mr. Craft raised six claims in his motion. Claim One: trial counsel was prejudicially ineffective in failing to seek a delay in the Faretta hearing and change of plea proceedings. Claim Two: prosecutorial misconduct in failing to investigate claims that FDOC guards wanted the victim to be harmed. Claim Three: prosecutorial misconduct in failing to advise the Court of the Florida Department of Corrections (“FDOC”) guards’ role in the killing of the victim as a possible mitigating factor. Claim Four: the State committed a *Giglio*³/*Napue*⁴ violation by advising the Court that Mr. Craft could have no pretense of moral justification because there is no evidence the victim was a child molester. Claim Five: Mr. Craft’s intellectual disability precludes the imposition of the death penalty.⁵ Claim Six: cumulative error.

³ *Giglio v. United States*, 405 U.S. 150 (1972).

⁴ *Napue v. People of the State of Ill.*, 360 U.S. 264 (1959).

⁵ Mr. Craft later withdrew this claim at the *Huff* hearing. (R. 471).

The State filed its response on January 17, 2023. (R. 392-425). In its response, the State admitted no error and asserted that no basis for relief exists (sic). It went on to state: “However, it appears that further evidentiary development may be necessary to fully refute Defendant’s argument as to some claims.” (R. 408-409). The State anticipated the testimony elicited at an evidentiary hearing would support denial of each of Defendant’s claims. (R. 409).

The Court summarily denied Mr. Craft’s motion in an Order dated September 26, 2023. (R. 533-656).

Facts relevant to summary denial

In the course of Mr. Craft’s unsworn plea colloquy, he advised the Court that he had drafted two motions. One of them was unnecessary because he was pleading guilty, but one was a demand for discovery. In reviewing the index he had been provided, he was certain that the entire discovery was not provided to him. (FH. 65). Based on his statement, the Court asked if Mr. Craft wanted “to wait on taking your plea until after you have received that other discovery or you just want it for your own records later?” Craft replied that he wanted it for his own records later. (FH. 65).

The Court advised Mr. Craft that having the full discovery was important because it might affect whether he wanted to plead guilty. However, if Craft was telling the Court he wanted to plead regardless of what was in the discovery, he would be willing to accept his guilty plea. The Court then asked the State if it was familiar with what the discovery issue was. (FH. 65-66). The State advised the Court that it told Mr. Craft that it would make duplicates of the discovery it had provided trial counsel, but that some of the discovery was contained on CDs or discs. The State and the Court advised Craft that he would likely not be able to access that discovery because the Department of Corrections would not provide the equipment necessary for him to review them. (FH. 66-67). Craft replied that he understood he may not ever be able to see those portions of the discovery. (FH. 67). That ended the Court's colloquy with Craft. After receiving a factual basis, the Court accepted the plea as given freely, voluntarily, knowingly and intelligently given. (FH. 69-70).

In a grievance filed a month after the death of the victim, Mr. Craft wrote to FDOC that he believed he was set up to kill his roommate. (R. 213; 291). Two days before being placed in the same cell as the victim, he had beaten another inmate and been placed in

confinement. That victim had reported to FDOC that he was in fear for his life from Mr. Craft. (R. 213; 293-295). After being placed in confinement, Mr. Craft told the guards that he would kill someone if they housed him with another inmate. (PP 50). FDOC guards placed him in the cell with the victim, who was in protective management for fear of his own safety and life. (R. 214; 298-311). At the time he was placed with the victim, there were eleven open beds noted in FDOC's bed inventory list. (R. 219; 381-385).

In a recorded interview to the FDLE agent investigating the death of the victim, another inmate, Michael Bullett, told the agent that he was actually housed with the victim before being transferred out and replaced with Mr. Craft. He further told him that when he was placed with the victim, the guards told him the victim was a sex offender and asked Bullett to harm him. When Bullett refused to harm the victim, he was removed from the cell and Craft installed in his place. (R. 313). Because the interview was recorded, Mr. Craft would not have been able to access that discovery because he did not have the necessary equipment.

In his 3.851 motion, Mr. Craft alleged that had he been apprised of all the information that inmate Bullett provided FDLE and the

State was obligated to produce in discovery, he would not have entered a guilty plea. (R. 214).

In his 3.851 motion, Mr. Craft alleged that his decision to plead guilty without full knowledge of the evidence the State possessed was a product of his damaged brain. In the two competency evaluations that were performed on Mr. Craft, both experts disclosed a brain injury that Craft suffered when he was thirteen years old. A serious car accident shattered both of his orbital sockets and resulted in damage to his frontal lobe and installation of a metal plate in his head. (R. 272; 280). Though Mr. Craft never reviewed the experts' reports, they had been produced to his trial counsel, who had yet to be discharged from the case. (FH. 5).

In support of his claim that his decision to plead guilty without full knowledge of the evidence was the product of brain damage, Mr. Craft submitted a report from Dr. Barry Crown, who had conducted a neuropsychological evaluation on Mr. Craft. Based on his evaluation and testing, he concluded that Craft had comparative deficits across multiple areas and his profile was consistent with organic brain damage. He found significant neuropsychological impairment impacting multiple functional areas with particular

reference to frontal lobe and executive function areas. As Craft had alleged in his 3.851 motion, Dr. Crown noted that Craft's functional impairments were in areas of the brain related to memory and information processing, reasoning, judgment, and are likely to impact language-based critical thinking. Some of Dr. Crown's testing indicated Craft was potentially intellectually disabled, but IQ testing would be required before confirming or ruling it out. (R. 523-527).

Mr. Craft alleged in his 3.851 that his trial counsel at the time of his competency evaluations was an experienced death-qualified attorney and, thus, should have been aware that severe brain injuries can result in detrimental effects that will remain with the sufferer through their entire life. Trial counsel should have also been aware that damage to the frontal lobe of the brain can severely impair a person's higher-level executive functions, to include decision-making, problem solving, thought and attention. (R. 210-211). Mr. Craft alleged that, given trial counsel's experience, he should have requested the Court order neuropsychological testing before accepting a guilty plea and invitation for death without full knowledge of the evidence the State possessed. (R. 212-213).

Without an evidentiary hearing to prove his claim that his decision to plead guilty without full knowledge of the evidence the State possessed was a product of his brain damage, the Court summarily rejected his claim. And without an evidentiary hearing to prove his claim that he would not have pled guilty had he known of the State's interview with inmate Bullett, the Court found no reasonable probability that he would not have entered his guilty plea anyway.

In Claim Two of his 3.851 motion, Mr. Craft alleged that, based on inmate Bullett's statement that the guards wanted the victim harmed, the State believed more investigation should be done to either rule out the guards' involvement, or determine how to handle it at trial. (R. 216; 313). In a September 6, 2018 email exchange between Jamie Tyndal and a prosecutor on Mr. Craft's case, Tyndal referenced Bullett's statement that the guards told him the victim was a sex offender and wanted him to beat him. When he refused, they moved him out and put Craft in there. (R. 313). In response, the prosecutor stated:

A similar issue came up in the Carter case. We pursued it as far as we could. It turned out that most of the inmates were making the

accusations about the Co's just to get some of them in trouble. None of it turned out to be true. Tip should look into it to the point we can disprove these allegations or prove them. If they are true, then we will deal with it. If it turns out to be disproved, like in Carter, then we avoid a red herring during the trial.

(R. 313).

Mr. Craft alleged that the only investigation into the guards' desire for the victim to be harmed was to re-interview Craft. In his second interview he told the agent that he had told the sergeant on confinement that he would kill his cellmate if they put him in with anybody. In response, the sergeant said, "I got somebody for you." (R. 216-217). Mr. Craft told the agent that the victim told him he was a child molester and he would gain access to children through his authority as a law enforcement or school resource officer. (R. 216-217).

Mr. Craft alleged that, from the September 2018 email to the date that Mr. Craft entered his guilty plea, no investigation was done as to whether Bullett's statements were true and why the guards would want to harm the victim. He alleged that had even a cursory investigation been done, the State would have learned that the victim was an admitted child molester and would gain access to children by

pretending he was a police officer. (R. 218; 315-362). The victim was in protective management custody because the inmates and guards knew he was a child molester and that made him a target for harm. (R. 218-219; 298-311; 367; 369-371; 387).

Without an evidentiary hearing, the Court found that Craft could not establish that he would not have pled guilty had the State followed through with its intent to investigate whether and why the guards wanted the victim harmed and produced that in discovery. (R. 545).

In Claim Three, Mr. Craft alleged that with a full investigation into how he ended up in the cell with the victim and why the guards wanted him harmed, those facts could have been submitted to a factfinder as mitigation evidence against a death sentence. (R. 223-24). Without an evidentiary hearing, or an acknowledgment that a jury would have been the factfinder if Mr. Craft had not decided to plead guilty and waive a jury, the Court concluded that it would not have found the evidence to be mitigating. (R. 549-550).

In Claim Four, Mr. Craft alleged that, in the absence of an investigation into the guards and the victim, with subsequent disclosure to the defense, the State argued that the only potential

argument against the Court finding CCP was that Mr. Craft believed he was morally justified because the victim had harmed children. (R. 226). The State acknowledged it had been stated by people through Mr. Craft that was his motive. (R. 226; PP. 107). Mr. Craft's sister had testified that the victim had bragged to Craft about being a child molester and Craft had been messed with when he was young, so it was a flashback. She believed her brother was set up. (PP. 84).

In urging the Court to reject any pretense of moral justification, the State advised the Court that there was no evidence before it or in the record that the victim was a child molester. (R. 226; PP 107). Mr. Craft alleged that it was misleading to claim that he could have no legitimate **pretense** of moral justification because Craft had not proven the victim to be a child molester. (R. 226-227). (emphasis supplied)

In rejecting Mr. Craft's claim without a hearing, the Court noted that undersigned counsel conceded at the *Huff*⁶ hearing that what the State said was "technically true" and, therefore, Mr. Craft could not establish the argument was false or misleading. The Court's order

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

omits counsel's argument that Mr. Craft still maintained it was misleading. (R. 509-510). That if the State had done even a cursory investigation into why the guards would have wanted the victim harmed, the State would not have been able to make the argument that Craft could have no pretense because the fact the victim was a child molester was only a supposition by Craft and his family. (R. 509-510; PP. 107).

STANDARD OF REVIEW

A court's decision whether to grant an evidentiary hearing on a rule 3.851 motion is subject to de novo review. *Hojan v. State*, 212 So. 3d 982, 989 (Fla. 2017). "[T]here is a presumption that claims for relief sought in a rule 3.851 motion are presumptively entitled to a postconviction evidentiary hearing." *Id.* at 988. "An evidentiary hearing must be held on an initial 3.851 motion whenever the movant makes a facially sufficient claim that requires factual determination." *Id.*

SUMMARY OF ARGUMENT

I. Mr. Craft claimed in his rule 3.851 motion that he would not have pled guilty if he had known that another inmate had told FDLE that the guards had told him that the victim was a sex offender and asked him to harm him. A month after the victim's death Craft had filed a grievance claiming that FDOC set him up. The information that inmate Bullet told FDLE provided corroborating evidence for that belief. Mr. Craft also claimed that his decision to plead guilty despite not having all his discovery, to include the foregoing statement, was a product of his brain damage. This claim required further evidentiary development before adjudicating it. It was error to summarily deny the claim without a hearing.

II. Based on inmate Bullet's statement to FDLE of the guards asking him to harm the victim, the State believed it necessary to investigate his accusations to determine whether they were true or not and be able to address it at trial. The only investigation they undertook was to re-interview Craft. Even a cursory investigation would have revealed that the victim was a

sexual predator of children and was in protective custody because he feared he was a target as a sex offender. Despite being in protective custody and Mr. Craft threatening to kill his cellmate if they placed him with anyone, the guards placed him in a cell with the victim. It was error to summarily deny the claim.

III. The FDOC guards' role in facilitating the killing of the victim was a significant factor in the nature of the crime that Mr. Craft was convicted of. Had the sergeant on duty not "had somebody" for Craft to aim his volatile rage at, the victim would not have died; Mr. Craft would have served his term of years and been released from prison instead of waiting on death row for his execution. This fact, combined with the significant mitigation presented, could very well have tipped the scales to life. It was error to summarily deny the claim.

IV. The State's argument to the Court that it should reject any notion that Mr. Craft had a pretense of a moral justification because there was no evidence before the Court that the victim was a child molester was misleading. Mr. Craft was a *pro se* litigant and unaware that the State had intended to investigate an inmate's claims that the guards' themselves appeared to find it morally

justified to harm the victim, but forewent any actual investigation. While it was technically true that there was no evidence before the Court or in the record that the victim was a child molester, it was misleading because the State knew others had claimed that the victim was a sex offender and it was only its willful blindness that they may not have known that he was a child molester.

ARGUMENT

I. THE CIRCUIT COURT REVERSIBLY ERRED IN SUMMARILY DENYING MR. CRAFT'S CLAIM THAT TRIAL COUNSEL WAS PREJUDICALLY INEFFECTIVE IN FAILING TO SEEK A DELAY IN THE FARETTA HEARING AND CHANGE OF PLEA PROCEEDINGS.

Despite the State's concession that further evidentiary development may be necessary to fully refute Defendant's argument as to some claims, the Court summarily denied the motion.

In a grievance filed a month after the death of the victim, Mr. Craft wrote to FDOC stating that he believed he was set up to kill his cellmate. (R. EXH. E). In his first interrogation on May 16, 2018, Craft told the lead investigating agent, Tip Tyler of FDLE, that he killed the victim because he told him he was a child molester. (PP. 28-29). He told Tyler the victim had told him he was a law enforcement school resource officer in Cleveland, Ohio, and harmed the kids he was supposed to protect. (PP. 36).

Mr. Craft told agent Tyler that he was in confinement for beating up another inmate and then they put him in a cell with somebody that requested protection. When agent Tyler told Craft that his story did not make sense, Craft agreed and said the victim had even

received a disciplinary review because he refused to go back out to the unit. (PP. 38).

On September 11, 2018, agent Tyler went back to re-interview Mr. Craft. (PP. 45). Mr. Craft again told Tyler that the victim had told him he was a child molester. Tyler expressed skepticism and told Craft that he did not see anything in the victim's history that showed he was a child molester. (PP. 55). He also expressed skepticism that the victim would have told Mr. Craft he sexually preyed on children because that would make him a target. (PP. 56).

By the time of his second interview with Mr. Craft, agent Tyler had been told by another inmate, who had been housed with the victim before Craft, that when the guards moved him in with the victim they told him he was a sex offender and to beat him. When that inmate refused, they moved him out of the cell and put Craft in with the victim. (R. 313). Agent Tyler did not tell Craft what the other inmate told him about the guards and the victim's prior cellmate being solicited to harm the victim and only removed when he refused to do so.

By the time of Mr. Craft's guilty plea on March 27, 2019, there is no indication in the record that Craft was provided any information

that would have corroborated his claim that the victim was a child molester and his belief that FDOC guards set him up.

In the course of his plea colloquy, Craft advised the Court that he had drafted two motions, one of which was unnecessary given his guilty plea. The other motion, however, was a demand for discovery. In reviewing the index of discovery he was provided and the discovery itself, it was apparent to him that he did not have the entire discovery. (FH. 65). Given his lack of knowledge to everything the State had in its possession, the Court asked Craft if he wanted to wait to enter a plea until he had the opportunity to review all the discovery. The Court alternatively suggested that maybe Craft just wanted it for his own records later, to which Craft repeated the Court's language and said he wanted it for his records. (FH. 68).

The Court warned Mr. Craft that it was really important to have his discovery because it could contain information that might affect whether he wanted to plead guilty and he needed to review it before pleading. The Court asked if Craft was telling it that he wanted to plead guilty regardless of what the discovery said. Mr. Craft responded that he did. In an exchange with the State, it became clear that Craft might never be able to access all the discovery given he

was a prison inmate and FDOC likely would not give him the equipment to access discs or CDs. Mr. Craft acknowledged that he understood he may never be able to see what all the State had in its possession. (FH. 66-67). That ended the colloquy with Craft and the Court accepted the plea as given freely, voluntarily, knowingly and intelligently given. (FH. 69-70).

In determining whether a plea is knowing, intelligent, and voluntarily given, the Court is required to determine that a defendant understands, among other factors, “the nature of the charge and the mandatory minimum and maximum penalties provided by law....” *Sanchez-Torres v. State*, 130 So. 3d 661, 668-69 (Fla. 2013)(quoting *Gill v. State*, 14 So. 3d 946, 960-61 (Fla. 2009). While the Court’s plea colloquy show that Mr. Craft understood the crime he was charged with and its potential penalties, his statements to the Court demonstrate that he had an inadequate understanding of the nature of the evidence the State possessed that could prove or disprove first-degree murder or mitigate against a death sentence.

At the time of his guilty plea, Mr. Craft was unaware that there existed information to corroborate his belief that he was set up by FDOC guards and that the victim was a sex offender. In the course

of the postconviction investigation of his case, Mr. Craft learned that part of the discovery he was unable to access was the recorded interview with inmate Bullet, who told agent Tyler that when he was placed with the victim before Craft, the guards had told him the victim was a sex offender and asked Bullet to harm him.

In light of this previously unknown information, Mr. Craft alleged in his 3.851 motion that he would not have pled guilty had he known the corroborating evidence existed. Mr. Craft further alleged that his decision to plead guilty without full knowledge of the evidence the State had in its possession was a product of his damaged brain.

In two competency evaluations that were performed on Mr. Craft, both experts disclosed a brain injury that Craft suffered when he was thirteen years old. A serious car accident shattered both of his orbital sockets and resulted in damage to his frontal lobe and installation of a metal plate in his head. (R. 280.

Though Mr. Craft never reviewed the experts' reports, they had been produced to and reviewed by his trial counsel, who had yet to be discharged from the case. (FH. 5). Mr. Craft's trial counsel at the time of his *Faretta* hearing was an experienced death-qualified

attorney and, thus, should have been aware that severe brain injuries can result in detrimental effects that will remain with the sufferer from their entire life. Trial counsel should have also been aware that damage to the frontal lobe of the brain can severely impair a person's higher-level executive functions, to include decision-making, problem solving, thought and attention. (R. 210-211).

Given the evidence of a traumatic brain injury in his past, postconviction counsel retained an expert to determine whether the damage he suffered remained with Mr. Craft and impaired his judgment, thought processes, and decision-making ability. In support of his claim that his decision to plead guilty without full knowledge of the evidence was a product of that brain damage, Mr. Craft submitted a report from Dr. Barry Crown, who conducted a neuropsychological evaluation on Mr. Craft.

Based on Dr. Crown's evaluation and testing, he concluded that Craft had comparative deficits across multiple areas and his profile was consistent with organic brain damage. He found significant neuropsychological impairment impacting multiple functional areas with particular reference to frontal lobe and executive function areas. Dr. Crown noted that Craft's functional impairments were in areas of

the brain related to memory and information processing, reasoning, judgment, and are likely to impact language-based critical thinking. Some of Dr. Crown's testing indicated Craft was potentially intellectually disabled, but IQ testing would be required before confirming or ruling it out. (R. 523-527).

Dr. Crown's conclusion that Mr. Craft suffers from organic brain damage and significant neuropsychological impairments provides an objective and scientific basis to explain why Mr. Craft would say he wanted to plead guilty with insufficient knowledge of the evidence the State possessed. Mr. Craft's brain damage reveals why Mr. Craft would rationalize in his brain that the State's discovery was irrelevant to him when he did not know what it said. As alleged in his 3.851 motion, once he learned what it said in postconviction, it would have been entirely relevant to his decision to plead guilty. Had he been aware of inmate Bullet's statement, he would not have pled guilty.

Given Mr. Craft's claim that he would not have pled guilty had he been aware of Bullet's statements to FDLE, it was error to summarily deny his claim. There is no competent, substantial evidence to support the Court's finding that, despite Craft's claim that he would not have pled, there was no reasonable probability he

is telling the truth in asserting that claim. Without an evidentiary hearing, the Court is unable to provide this Court with competent, substantial evidence to support such a finding. By preventing Mr. Craft from his ability to prove that he would not have pled, the record is absent of any credibility determinations for Mr. Craft, Dr. Crown, Mr. Bullet, or any other witness who could have provided evidence to substantiate his claim.

In summarily denying Mr. Craft's claim, the Court provided six bases for denying relief. The claim is procedurally barred because it could have been raised on direct appeal. (R. 537). This finding ignores that Mr. Craft did not learn of what was contained in the discovery until postconviction. It further ignores that Mr. Craft did not learn that the traumatic brain injury he incurred at thirteen had deleterious and permanent effect to his brain that remained present at the time of his plea and rendered his judgment and decision making impaired.

The Court found that trial counsel did not render ineffective assistance by not seeking a delay to allow for neuropsychological testing and Mr. Craft's ability to know what the discovery he was missing said. It's basis for this finding is that Mr. Craft was found

competent to proceed and told the Court he did not care what the discovery said. (R. 537-539). This finding summarily rejects Mr. Craft's claims by circling back to unsworn statements Craft made at his plea colloquy and simply ignoring Mr. Craft's contention that they were not knowing, intelligent and voluntary because they were a product of his brain damage.

The Court found that Mr. Craft was precluded from challenging the knowing and voluntary nature of his plea because this Court had already found that it was and, therefore, was the law of the case. (R. 539-540). As it did in finding the claim was procedurally barred, this finding ignores that this Court did not know of what was contained in the discovery, nor did it know that Mr. Craft was brain damaged in an area of the brain that impaired his judgment and decision-making ability. That is perhaps why appellate counsel did not even raise the unknowing, unintelligent, and involuntary nature of his plea on direct appeal. *Craft*, 312 So. 3d at 58.

In support of its finding that the claim was barred because of law of the case, the Court relies on cases where the precise issue was already raised and briefed in prior proceedings. *See Thompson v. State*, 341 So. 3d 303 (Fla. 2022)(affirmances from previous

evidentiary hearings on intellectual disability permitted the trial court to summarily deny a new claim because an intervening change of law did not apply retroactively to Thompson); *see, also Wainwright v. State*, 2017 WL 394509 (Fla. Jan. 30, 2017) (“claim is procedurally barred as the law of the case because Wainwright raised this claim in his initial postconviction motion and this Court resolved the claim on appeal”); *Hyland v. Inch*, 291 So. 3d 1024 (Fla. 1st DCA 2020). The parenthetical that the Court cites is actually simply a verbatim parenthetical from another case. The Court noted that Hyland raised identical claims in a prior habeas petition and was rejected by the Court.

Contrary to the aforementioned cases, Mr. Craft did not raise or brief this issue, and did not provide this Court with any facts that formed the basis of his argument for relief in his 3.851 motion.

In its fourth reasoning for summarily denying the claim, the Court found that Mr. Craft already received the delay he asserts trial counsel should have sought. In support of its finding, the Court points to the two-month delay from January 23, 2019 hearing, wherein it was determined that competency evaluations, to the March 27, 2019, *Faretta* and change of plea hearing. (R. 540). This

finding ignores that it was not until the competency evaluations were performed in March that the brain injury was disclosed. It further ignores that the Court was not aware that Mr. Craft was not privy to the State's discovery before deciding to plead guilty until the change of plea hearing.

The Court further found that the record refutes assertion that Defendant's decisions were impulsive or uninformed. In support of its finding, the Court relies on the competency evaluations wherein the experts opined that Mr. Craft had rational bases for wanting death. It credits Mr. Craft's belief that he would be more comfortable on death row, despite never residing there. It credits Mr. Craft's decision to plead to avoid having his family go through a trial and have to testify, despite the fact that they appeared at the trial and testified anyway. (R. 540-541).

In its final finding that Mr. Craft is denied relief without an evidentiary hearing, the Court found that Mr. Craft could not have his plea withdrawn because he cannot establish it was involuntary or unknowing. (R. 541-543). Without an evidentiary development or ability to assess the credibility of witnesses, the Court concluded Craft could not establish a reasonable probability he would not have

pled guilty even if he knew there was corroboration of his belief he was set up by FDOC and proof the victim was a child molester, and even if he knew that his judgment and decision-making ability were severely impaired due to his brain damage.

Without an evidentiary hearing to prove his claim that his decision to plead guilty without full knowledge of the evidence the State possessed was a product of his brain damage, the Court summarily rejected his claim. And without an evidentiary hearing to prove his claim that he would not have pled guilty had he known of the State's interview with inmate Bullett, the Court found no reasonable probability that he would not have entered his guilty plea anyway.

In light of the foregoing, it was error to summarily deny Mr. Craft's claim. This Court should remand to the trial court to conduct an evidentiary hearing before ruling on this claim.

II. THE CIRCUIT COURT REVERSIBLY ERRED IN SUMMARILY DENYING MR. CRAFT'S CLAIM OF PROSECUTORIAL MISCONDUCT IN FAILING TO INVESTIGATE CLAIMS THAT FDC GUARDS WANTED THE VICTIM TO BE HARMED.

Despite the State's concession that further evidentiary development may be necessary to fully refute Defendant's argument as to some claims, the Court summarily denied the motion.

In the course of his postconviction investigation, Mr. Craft learned that the State had actually determined that further investigation of inmate Bullet's claim that he was told by the guards that the victim was a sex offender and they asked Bullet to harm him, and he was only removed from the cell and replaced with Mr. Craft when he refused to do so. In a September 6, 2018, email, a State actor emailed one of the prosecutors and advised him of inmate Bullet's claim. In response, the prosecutor stated:

A similar issue came up in the Carter case. We pursued it as far as we could. It turned out that most of the inmates were making the accusations about the Co's just to get some of them in trouble. None of it turned out to be true. Tip should look into it to the point we can disprove these allegations or prove them. If they are true, then we will deal with it. If it turns out to be disproved, like in Carter, then we avoid a red herring during the trial.

(R. 313).

The entirety of the investigation into the allegations that guards desired for the victim to be harmed was to re-interview Craft. As set forth in Claim I, Mr. Craft told the investigating agent from the beginning that he killed the victim because he was child molester. The victim had told him he used his authority as a law enforcement or school resource officer to gain access to the children and molest them. Tyler told Mr. Craft that it did not make sense that they would place him, who had just tried to kill another inmate, in a cell with a man on protective custody. (PP. 38).

When agent Tyler went back to re-interview Craft and investigate Bullet's claim of the guards' involvement, he did not tell Craft he was investigating Bullet's claim. He also specifically told Craft that his investigation had not revealed that the victim was a child molester. (PP. 55). He asked Craft again how he came to be in a cell with the victim. Craft told him that was in confinement for attempting to kill another inmate and told the sergeant on duty that if they placed him in a cell with anyone he would kill them. In response, the sergeant said, "I got somebody for you." (PP. 49-51). Craft went on to say that he was not saying the sergeant put him in

the cell to kill the victim because he did not tell me to kill him. (PP. 51). Agent Tyler knew, however, that allegations had been made by another inmate that they did, in fact, want him harmed. And because Craft was in a violent and volatile state and already threatened to kill his cellmate, there was no need for the sergeant to expressly request it.

In trying to determine why Mr. Craft thought the victim was a child molester, he expressly told Craft that he could not find anything in the victim's history that indicated he was a child molester, only a possessor of child pornography maybe. (PP. 55). He also expressed skepticism at Craft's claim that the victim told him he was child molester and would prey on children using his status as an authority because that would clearly make him a target. (PP. 56).

From agent Tyler's second interview in September, 2018, until Craft's change of plea in March, 2019, Mr. Craft was never made aware of the claims from another inmate that the guards wanted him to harm the victim because he was a child molester. No investigation was ever undertaken to ascertain why the guards would have wanted the victim harmed.

Had agent Tyler actually done any investigation into the victim's history beyond a review of the charges he was convicted for, he would have discovered that the victim had written letters to the lead investigator on the charge that he was at Columbia C.I. for, as well as his probation officer. (R. 315-362). Counsel will refrain from citing any of the explicit and violent language from the letters, but a proper review of the letters, attached as Exhibit I to Craft's 3.851 motion, reveal the mind a truly disturbed child predator. In corroboration with what Craft told agent Tyler the victim told him, the letters reveal that the victim's modus operandi to facilitate him gaining access to children and molest them was to pretend that he was a law enforcement officer.

In addition to that corroborating evidence, agent Tyler simply needed to review the victim's FDOC classification file to learn that he was, in fact, in protective management because he was terrified of being a target of violence as a sex offender. (R. 298-311). In one grievance, the victim told FDOC that inmates and guards knew he was a sex offender by searching him on the Internet. (R. 367). A quick google search of the victim's name reveals a 2007 news article from Cleveland.com, with the headline "Most wanted sex offender caught."

(R. 369-371). A review of the classification file would have further revealed that the victim had previously been badly beaten at Columbia C.I. (R. 379).⁷

A review of the classification file would have further corroborated Craft's statement to agent Tyler that the victim was so terrified to come out of his cell that he had received disciplinary reports for refusing to leave it. (R. 387).

As the foregoing shows, even a relatively easy investigation into Bullet's claim that the guards wanted the victim harmed would have shown the likelihood that he was telling the truth. It further would have demonstrated that Craft was telling the truth as well. Despite their email expressing the need to investigate the claims and be prepared to address them at trial, the State did nothing to investigate. Presumably the State was aware that if Craft did not fire his attorney and choose to plead guilty without having access to this information, trial counsel would have read it in discovery and followed-up with his own investigation. Alas, it was not to be and the State was gifted with

⁷ In his 3.851 motion, Craft alleged that the inmate who was housed with the victim when he was beaten was urged by the C.C.I. guards to harass the victim. (R. 219).

Craft's ignorance of it all and unaware that he had hard evidence to support his belief that he was set up by FDOC and placed with the victim because he was a sex offender.

In summarily denying Mr. Craft's claim of prosecutorial misconduct for failure to investigate, the Court found that it was procedurally barred because it should have been raised on direct appeal. (R. 544). This finding ignores that Mr. Craft did not learn of Bullet's allegations until postconviction. It further ignores that Mr. Craft did not learn of the State's intention to investigate and prepare to address the allegations. And, finally, it ignores that all the information about the victim's history, both in and out of prison, was not discovered until postconviction.

In his Rule 3.851 motion, Mr. Craft alleged that had he been privy to the information discovered in his postconviction investigation he would have not pled guilty. While his motion specifically claimed that the state conduct was so egregious that he could have pursued an objective entrapment defense, Mr. Craft concurs with the Court's conclusion that such a defense is a question of law and, thus, would not be submitted to a jury. While Mr. Craft maintains the evidence supports the affirmative defense and would be persuasive to a jury,

he cannot in good faith contend with the Court's finding that it would have rejected it.

The Court's finding, however, does not alter Mr. Craft's claim that the State's failure to investigate the claims of guard involvement was prosecutorial misconduct. Despite acknowledging the necessity to investigate and prepare to address the allegations, if proven, or argue they are simply a red herring, the State seized on Mr. Craft's brain-damaged and uninformed decision to fire counsel and plead guilty and let him remain forever in the dark.

In light of the foregoing it was error to summarily deny Mr. Craft's claim. The Court's rulings are largely predicated on its erroneous finding in Claim One that Mr. Craft's guilty plea was not unknowing, unintelligent and involuntary. This Court should remand to the Circuit Court with instructions to conduct an evidentiary hearing before denying relief.

III. THE CIRCUIT COURT REVERSIBLY ERRED IN SUMMARILY DENYING MR. CRAFT'S CLAIM OF PROSECUTORIAL MISCONDUCT IN FAILING TO ADVISE THE COURT OF THE FDOC GUARDS' ROLE IN THE KILLING OF THE VICTIM AS A POSSIBLE MITIGATING FACTOR.

Despite the State's concession that further evidentiary development may be necessary to fully refute Defendant's argument as to some claims, the Court summarily denied the motion.

For the sake of brevity, Mr. Craft relies principally on the factual basis in the foregoing claim as it relates to the guards' involvement in placing Mr. Craft, whom they knew to be in a volatile, violent, and homicidal state, in a cell with the victim who was known to be a sex offender.

In his 3.851 motion, Mr. Craft made his claim based on the record before him, which was a guilty plea and bench trial, with an expressed desire to waive mitigation. Of course, if Mr. Craft had known of the guards' desire in having the victim harmed and, thus, never entered a guilty plea, the mitigating evidence would have been submitted to a jury to determine whether that evidence constituted mitigation against a death sentence.

As it stood at the penalty phase, the State indicated to the Court that, having not anticipated that Mr. Craft's family would show up, he had come up with a range of mitigators that it believed the Court consider in determining the appropriate sentence. (PP. 101). It further indicated to the Court that the mitigating evidence was significant. (PP. 108).

The mitigation provided by the Pre-Sentence Investigation and testimony at the trial revealed that Mr. Craft's brain was compromised developmentally before he left the womb due to his mother's heavy use of crack cocaine while pregnant. (R. 268). Mr. Craft's aunt stated he was classified as mentally retarded before he was twelve and was diagnosed with ADHD and bipolar disorder, and possible schizophrenia. (R. 265). His mother was a prostitute and neglected her kids so severely they would eat leaves off the tree and bugs in the yard. (R. 268).

Mr. Craft's aunt wrote a letter for the PSI and described Bobby's childhood as rife with extreme physical abuse, "like something off the movies." (R. 264). She and other family members told of the sexual abuse Mr. Craft suffered as a child, beginning at the age of six. Some of that abuse came at the hands of strangers his mother

would allow in the home, as well as by his step-grandfather. (R. 264; PP 84). Mr. Craft's sister told the Court that his sexual abuse was a trigger that caused him to kill the victim when he found out he was a child molester. She believed the state set her brother up. (PP. 84).

As one of his aunt's described, Craft had severe behavioral and mental issues that plagued him his whole life, but instead of getting him the psychiatric help he needed, his mother believed she could beat the problems out of him. (R. 264; 268). On one such occasion, he was beaten so cruelly that he was covered in blood and welts from head to toe. (R. 264). As her children grew older and their grandmother was raising them, Craft's mother decided to be a friend instead of a nurturer, which involved doing drugs with them as pre-teens. (R. 264; 268).

In addition to the toxic effects of pre-natal exposure to drugs and adolescent drug use on his developing brain, Craft also suffered the traumatic brain injury from the car accident when he was thirteen, as previously described.

This is the childhood that Mr. Craft lived and explains how he can become so agitated that he would try and kill someone. But instead of getting Craft psychological help and allowing him time to

cool off in confinement by himself, the guards decided to place him in the cell with a sex offender who was in protective custody management because he feared for his safety. Unbeknownst to Mr. Craft, but certainly well known to the State, was the fact that another inmate had told FDLE that the guards had tried to get him to harm the victim and when he refused, they removed him and placed Craft in the cell with the victim in his stead.

A mitigating circumstance is anything relevant to the nature of the crime and the character of the defendant that provides reasons for why a defendant should not receive a death sentence. Section 921.141, Fla. Stat. (2023). As the foregoing demonstrates, and the facts outlined in Claim Two, the guards' role in the death of the victim was a significant factor in the nature of the crime that Mr. Craft was convicted of. Had the sergeant not "had somebody" for Craft to aim his volatile rage at, the victim would not have died; Mr. Craft would have served his term of years and been released from prison instead of waiting on death row for his execution.

In summarily denying relief, the Court found that the claim was procedurally barred because it should have been raised on direct appeal. (R. 548). As argued in both preceding claims, this claim was

unknown to Mr. Craft until postconviction and, thus, could not have been raised on direct appeal.

In summarily denying relief, the Court further found that the proposed evidence would not have changed the outcome. (R. 550). It is important to note that the postconviction judge denying relief was not the trial judge who imposed the death penalty on Craft. With a complete and accurate picture of the entirety of how the offense occurred, the significant mitigation actually presented, and a personal observation of Mr. Craft and his family in Court, a fact finder may very well have found as mitigating the fact the crime would not have been committed without the facilitation of the guards and swayed the determination of punishment.

In light of the foregoing it was error to summarily deny Mr. Craft's claim. The Court's rulings are largely predicated on its erroneous finding in Claim One that Mr. Craft's guilty plea was not unknowing, unintelligent and involuntary and a jury would never hear this evidence. This Court should remand to the Circuit Court with instructions to conduct an evidentiary hearing before denying relief.

IV. THE CIRCUIT COURT REVERSIBLY ERRED IN SUMMARILY DENYING MR. CRAFT'S CLAIM THE STATE COMMITTED A GIGLIO/NAPUE VIOLATION BY ADVISING THE COURT THAT MR. CRAFT COULD HAVE NO PRETENSE OF MORAL JUSTIFICATION BECAUSE THERE WAS NO EVIDENCE THE VICTIM WAS A CHILD MOLESTER.

Despite the State's concession that further evidentiary development may be necessary to fully refute Defendant's argument as to some claims, the Court summarily denied the motion.

In urging the court to find the CCP aggravator, the State advised the Court that the only potential argument against its finding was that Mr. Craft believed he was morally justified because the victim had harmed children. (PP. 107). The State suggested the Court should disregard Mr. Craft's sister's testimony that her brother killed the victim because he was triggered by the victim telling him he was a child molester and that she believed her brother was set up because there was no evidence before the Court or in the record that the victim was a child molester. (PP. 84; 107).

The State made this argument despite knowing that another inmate had told FDLE that the guards had told him the victim was a sex offender and asked him to harm him. And while inmate Bullet

did not tell the agent the guards said he was a child sex offender, the State made the argument knowing that it never performed the investigation it intended to do to determine the truth of his accusations.

Due process precludes the State from presenting either false or misleading evidence and/or false or mislead argument. *Giglio*, 405 U.S. at 153 (“deliberate deception of a court and jurors by presentation of known false evidence is incompatible with ‘rudimentary demands of justice.’”). As this Court has recognized, “[The State] may not subvert the truth-seeking function of the trial by obtaining a conviction or sentence based on deliberate obfuscation of relevant facts.” *Garcia v. State*, 622 So. 2d 1324, 1331 (Fla. 1993).

In considering whether the State had proven the CCP aggravator, the Court was free to reject Mr. Craft’s pretense of moral justification. For that finding or weight to be compatible with due process, however, it was required to be premised on a true and accurate presentation of the facts.

Mr. Craft could not have raised this issue on direct appeal because the facts that form the basis for it were not known to Craft until postconviction.

In finding that the claim is refuted by the record, the Court relies on undersigned counsel's concession at the *Huff* hearing that what the State said was "technically true" and, therefore could not establish it was false or misleading. (R. 551). The Court's order omits counsel's argument that Craft still maintained it was misleading. (R. 509-510). And if the State had done the investigation it determined was necessary to refute or confirm inmate Bullet's accusations, the State would have never been able to urge the Court to reject any pretense of moral justification because it was only a notion in Craft's mind.

In light of the foregoing it was error to summarily deny Mr. Craft's claim. The Court's rulings are largely predicated on its erroneous finding in Claim One that Mr. Craft's guilty plea was not unknowing, unintelligent and involuntary. This Court should remand to the Circuit Court with instructions to conduct an evidentiary hearing before denying relief.

V. CUMULATIVE ERROR.

Mr. Craft did not receive the fundamentally fair trial to which he was entitled under the Fifth, Sixth, Eighth and Fourteenth Amendments. *See Heath v. Jones* 941 F. 2d 1126 (11th Cir. 1991); *Derden v. McNeil*, 938 F. 2d 605 (5th Cir. 1991). The errors claimed by Mr. Craft, when considered as a whole, entitle him to an evidentiary hearing to prove up his claims.

To comport with due process, postconviction relief proceedings must provide meaningful access to the judicial process. *See Kokal v. State*, 901 So. 2d 766, 778 (Fla. 2005). To summarily deny Mr. Craft's 3.851 motion without any ability to demonstrate his entitlement to relief through evidence at an evidentiary is not providing him meaningful access to the process, in the Court below or his argument to this Court based on an insufficient record.

The deprivation of meaningful access to the process is particularly true with the Court's finding that Mr. Craft would have pled guilty even if he had the full discovery he wanted, and learned of inmate Bullet's statement to FDLE that the FDOC guards wanted the victim harmed because he was a sex offender. Mr. Craft affirmatively claimed to the contrary and he should have been

entitled to present his evidence that he would not have, in fact, pled had he been aware of such evidence in the State's possession. All his other remaining claims relate back to that deficit in his knowledge prior to pleading guilty and demanding death and, thus, equally deprived him of any meaningful postconviction proceeding.

CONCLUSION

For the reasons set forth in this Initial Brief, Robert Earl Lee Craft has demonstrated his entitlement to an evidentiary hearing in that he filed a facially sufficient motion that was not refuted by the record. Accordingly, this case should be remanded to the Circuit Court with instructions to hold an evidentiary hearing before adjudicating Mr. Craft's claims for relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by electronic service to all counsel of record on this 3rd day of April, 2024.

CERTIFICATION OF TYPE SIZE AND STYLE

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/s/ Alice B. Copek
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