

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

REPLY BRIEF OF APPELLANT

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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.

Evidentiary hearings are held to establish the historical facts and to resolve factual disputes. *Truehill v. State*, 358 So. 3d 1167, 1186 (Fla. 2022). As demonstrated in both his Rule 3.851 motion and Initial Brief to this Court, an evidentiary hearing is necessary to establish historical facts and resolve the factual dispute of whether Mr. Craft would have pled guilty had he been aware of all the discovery the State had in its possession and not suffering under the detrimental effects that his damaged brain causes to his judgment, impulsivity, and decision-making ability.

In a grievance filed a month after the death of the victim in this case, Mr. Craft wrote to the Florida Department of Corrections (FDOC) that he believed he was set up to kill his roommate. (R. 291). Unbeknownst to Mr. Craft, the inmate who had been housed with the victim immediately prior to Mr. Craft, Michael Bullett, had told the lead investigating agent for Florida Department of Law Enforcement

(FDLE) that when the guards placed Bullett in the cell with the victim, the guards told him the victim was a sex offender and to beat him. (R. 313). It was only after Bullett refused to harm the victim that they removed him and put Mr. Craft in the cell with the victim. (R. 313).

As Mr. Craft alleged in his 3.851 motion, he remained unaware at the time of his plea that Inmate Bullett had given the foregoing statement to FDLE, which would have corroborated his belief that he was set up. (R. 213-214). Contrary to the unsworn statements he made to the trial court in his plea colloquy¹ - that any discovery the State possessed but he did not have knowledge of or access to would be irrelevant to his decision to plead guilty - Mr. Craft affirmatively alleged in his 3.851 that, had he known of what Inmate Bullett told FDLE, he would not have pled guilty. (R. 215).

Prior to entering his guilty plea the Court conducted a *Faretta*² hearing. All were on notice at the commencement of the hearing that he intended to plead guilty. (FH. 4). All were on notice that Mr. Craft had not received all the discovery, as Mr. Craft had filed a demand

¹ The Court never placed Mr. Craft under oath, as required by Fla. R. Crim. P. 3.172(c).

² *Faretta v. California*, 422 U.S. 806 (1975)

for discovery because he was certain he did not have it all. (FH. 65). All were on notice, to include Mr. Craft's attorney, that he had suffered a severe frontal lobe injury when he was thirteen years old; both competency experts had disclosed this devastating incident in their reports. (R. 272; 280; FH. 5).

Appellant specifically alleged in his 3.851 motion that had his proceedings been delayed for neuropsychological testing, the Court would have been aware that Appellant still suffered from the detrimental effects of a severe frontal lobe injury he sustained in 2004. He further alleged that those detrimental effects included substantial impairment in his decision-making ability and the capacity to employ sound and reasoned judgment. (R. 212). Common sense dictates that a sound and reasoned judgment in deciding to enter a guilty plea to capital murder includes a full understanding of the facts in the State's possession.

In its Answer Brief, the State claims that Mr. Craft's brain damage, unless severe, would not have affected the outcome of his decision to plead guilty. (AB. 30). This assertion ignores that Mr. Craft was deprived of his ability to prove, through evidentiary development at a hearing, the severity of the brain damage and

whether or not it was sufficient to affect his decision to enter a plea without full knowledge of the facts of his case.

At a hearing, Mr. Craft could, under oath, explain why his unsworn testimony to the Court was not true. Contrary to his statement that he did not care what was in the discovery, he did care once he learned what was in it. With the combination of his testimony and his neuropsychological expert, Mr. Craft could demonstrate that his statements to the Court were not an intentional lie, but a product of his damaged brain.

Without the benefit of an evidentiary hearing, the Court denied Mr. Craft relief and found there is no reasonable probability that, had he known the contents of inmate Bullett's statement, he would not have pled guilty. The reasonable probability is that Mr. Craft has affirmatively said he would not have. His neuropsychological expert could provide the context for why he would have said different in the past. Whether his unsworn statements to the Court at the time of the plea are true, or whether his allegations now, which must be accepted as true until an evidentiary hearing is held, require credibility determinations and factual findings to resolve the conflict.

Mr. Craft has raised this claim at the first opportunity that he could. Nothing in the record on direct appeal indicated Mr. Craft suffered from brain damage that affected his decision to plead guilty without full knowledge of the facts. Nothing in the record on direct appeal indicated what was missing from the discovery that may have affected Mr. Craft's decision whether to plead guilty.

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.

In the course of his postconviction investigation, Mr. Craft learned that the State had actually determined there should be 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; that Bullett 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).

As the foregoing email makes clear, the State believed Inmate Bullett's statement could be exculpatory and impeaching. Yet, no investigation into the allegations that guards desired for the victim to be harmed was done except to re-interview Craft.

Mr. Craft acknowledges that this claim is reliant on this Court granting relief in Claim I. Should this Court determine that Mr. Craft is entitled to an evidentiary hearing in Claim I, it should also remand with instructions to allow evidence at the hearing to establish this claim.

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.

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 victim's status and the guards' desire in having 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.

Mr. Craft acknowledges that this claim is reliant on this Court granting relief in Claim I. Should this Court determine that Mr. Craft is entitled to an evidentiary hearing in Claim I, it should also remand with instructions to allow evidence at the hearing to establish this claim.

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.

The State's reliance on there being no possibility of prejudice because this was a bench trial and, therefore the judge knew all the evidence, is flawed. The State relies on Mr. Craft's statement that he killed the victim because he was a sex offender, as well as his sister claiming the same. His sister's statement emanated from what Mr. Craft told her. Mr. Craft's statements could be chalked up to self-serving hearsay. And chalking it up as simply self-serving hearsay with no evidence of it being true is precisely what it told the Court in its misleading argument.

The State was the only party aware that another inmate had alleged that the guards knew the victim was a sex offender and wanted him harmed. The State was the only party aware that the State had believed it necessary to look into the allegations to determine whether they were true or not. The State was the only party aware that no such investigation had been done that would have, in fact, revealed the victim to be a self-confessed child sexual predator.

Mr. Craft acknowledges that this claim is reliant on this Court granting relief in Claim I. Should this Court determine that Mr. Craft is entitled to an evidentiary hearing in Claim I, it should also remand with instructions to allow evidence at the hearing to establish this claim.

V. CUMULATIVE ERROR.

No further argument.

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,

/s/ Alice B. Copek

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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 19th day of June, 2024.

CERTIFICATION OF TYPE SIZE AND STYLE

This is to certify that the Initial Brief of Appellant has been reproduced in a 14-point Bookman Old Style type, a font that is not proportionately spaced. The brief contains 2,144 words.

/s/ Alice B. Copek
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