

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC2024-1264

JESSE BELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE THIRD
JUDICIAL CIRCUIT, IN AND FOR
LAFAYETTE COUNTY, FLORIDA
Lower Tribunal No.: 19000055CFBXM**

INITIAL BRIEF OF THE APPELLANT

Adrienne Joy Shepherd

Florida Bar Number 1000532

Email: shepherd@ccmr.state.fl.us

Ali Shakoor

Florida Bar Number 0669830

Email: shakoor@ccmr.state.fl.us

Law Office of The Capital Collateral

Regional Counsel - Middle Region

12973 North Telecom Parkway

Temple Terrace, Florida 33637

Telephone: (813) 558-1600

Fax: (813) 558-1601

Secondary Email: support@ccmr.state.fl.us

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIES.....iv

REQUEST FOR ORAL ARGUMENT1

PRELIMINARY STATEMENT REGARDING REFERENCES1

STATEMENT OF THE CASE AND FACTS2

 I. Procedural History2

 II. Statement of Facts5

SUMMARY OF ARGUMENT.....27

STANDARD OF REVIEW29

ARGUMENT30

 I. THE TRIAL COURT ERRED IN SUMMARILY DENYING BELL’S CLAIM THAT BELL’S WAIVERS OF COUNSEL AND A PENALTY PHASE JURY WERE NOT VOLUNTARY, CONTRARY TO HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION30

 A. The trial court erred in summarily denying Bell’s claim that due to the severe abuse and deprivation that Bell suffered from Florida State Prison staff, Bell’s waiver of counsel was rendered involuntary, which resulted in fundamental error requiring that he be granted new penalty phase proceedings32

B. The trial court erred in summarily denying Bell’s claim that due to the severe abuse and deprivation that Bell suffered from Florida State Prison staff, Bell’s waiver of a penalty phase jury was rendered involuntary, which resulted in fundamental error requiring that he be granted new penalty phase proceedings39

The Trial Court Findings43

II. THE TRIAL COURT ERRED IN SUMMARILY DENYING BELL’S CLAIM THAT HE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE OF HIS CAPITAL TRIAL, IN VIOLATION OF THE SIXTH AMENDMENT AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. TRIAL COUNSEL WAS INEFFECTIVE UNDER *STRICKLAND V. WASHINGTON*, 466 U.S. 668 (1984) FOR FAILING TO ADEQUATELY INVESTIGATE EVIDENCE THAT BELL WAS BEING ABUSED BY FLORIDA STATE PRISON STAFF, WHICH INDICATED THAT BELL’S WAIVERS WERE NOT VOLUNTARY56

A. The trial court erred in summarily denying Bell’s claim that trial counsel rendered prejudicial ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984) for not reviewing the audiotaped interview of Bell conducted by Investigator J.T. Williams on October 9, 2019 and apprising the trial court about the abuse Bell was experiencing at Florida State Prison58

B. The trial court erred in summarily denying Bell’s claim that trial counsel rendered prejudicial ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984) for not finding and interviewing Mitchell Womack at FSP, to corroborate the abuse Bell was suffering at FSP64

C. The trial court erred in summarily denying Bell’s claim that trial counsel rendered prejudicial ineffective assistance under <i>Strickland v. Washington</i> , 466 U.S. 668 (1984) for not finding and interviewing Leo Boatman at FSP, to corroborate the abuse Bell was suffering at FSP	68
D. The trial court erred in summarily denying Bell’s claim that he was deprived of a constitutionally fair trial due to the cumulative errors made by trial counsel.....	70
<u>The Trial Court’s Findings</u>	72
III. THE TRIAL COURT ERRED IN SUMMARILY DENYING BELL’S CLAIM THAT THERE IS COMPELLING AND INDIVIDUALIZED MITIGATION THAT WEIGHS AGAINST BELL’S DEATH SENTENCE. FAILURE TO TAKE BELL’S UNIQUE MITIGATION INTO ACCOUNT IN CAPITAL SENTENCING WOULD VIOLATE BELL’S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AND HIS RIGHT TO INDIVIDUALIZED SENTENCING UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.....	80
CONCLUSION AND RELIEF SOUGHT.....	87
CERTIFICATE OF SERVICE	89
CERTIFICATE OF COMPLIANCE	90

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Alfred v. State</i> , 71 So. 3d 138 (Fla. 4th DCA 2011).....	47, 50
<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991).....	34, 41
<i>Baker v. State</i> , 879 So. 2d 663 (Fla. 5th DCA 2004).....	73
<i>Barnes v. State</i> , 124 So. 3d 904 (Fla. 2013).....	48, 84
<i>Bell v. Florida</i> , 143 S. Ct. 184 (2022).....	4
<i>Bell v. State</i> , 336 So. 3d 211 (Fla. 2022).....	<i>passim</i>
<i>Bodden v State</i> , 766 So. 2d 416 (Fla 4 th DCA 2000).....	73
<i>Booker v. State</i> , 969 So. 2d 186 (Fla. 2007).....	49
<i>Brady v. State</i> , 910 So. 2d 388 (Fla. 2d DCA 2005).....	36
<i>Brady v. U.S.</i> , 397 U.S. 742 (1970).....	33, 36, 40
<i>Brewer v. Williams</i> , 430 U.S. 387 (1977).....	54
<i>Brown v. State</i> , 124 So. 2d 481 (Fla. 1960).....	35
<i>California v. Brown</i> , 479 U.S. 538 (1987).....	84-85
<i>Cartwright v. State</i> , 112 So. 3d 582 (Fla. 4th DCA 2013).....	48-50
<i>Chapman v. California</i> , 386 U.S. 18 (1967).....	34, 41
<i>Dauer v. State</i> , 570 So. 2d 314 (Fla. 2d DCA 1990).....	76
<i>Derden v. McNeel</i> , 938 F.2d 605 (5th Cir. 1991).....	70-71
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968).....	39, 40

TABLE OF AUTHORITIES – cont’d

Cases	Page(s)
<i>Eddings v. Oklahoma</i> , 455 U.S. 104 (1982).....	86-87
<i>Edwards v. Arizona</i> , 451 U.S. 477 (1981).....	32, 37
<i>Evans v. State</i> , 737 So. 2d 1167 (Fla. 2d DCA 1999).....	77
<i>Faretta v. California</i> , 422 U.S. 806 (1975).....	32-33
<i>Farr v. State</i> , 124 So. 3d 766 (Fla. 2012).....	49-50
<i>Figueroa-Sanabria v. State</i> , 366 So. 3d 1035 (Fla. 2023).....	<i>passim</i>
<i>Freeman v. State</i> , 761 So. 2d 1055 (Fla. 2000).....	29
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963)	<i>passim</i>
<i>Gonzalez v. State</i> , 990 So. 2d 1017(Fla. 2008).....	48
<i>Gordon v. State</i> , 608 So. 2d 925 (Fla. 3d DCA 1992).....	76
<i>Gore v. State</i> , 846 So. 2d 461 (Fla. 2003).....	30
<i>Green v. State</i> , 975 So. 2d 1090 (Fla. 2008).....	30
<i>Grim v. State</i> , 971 So. 2d 85 (Fla. 2007).....	40
<i>Guisasola v. State</i> , 667 So. 2d 248 (Fla. 1st DCA 1995).....	77
<i>Hall v. State</i> , 754 So. 2d 70 (Fla. 4 th DCA 2000).....	77
<i>Henry v. State</i> , 920 So. 2d 1245 (Fla. 5 th DCA 2006).....	47, 50
<i>Huff v. State</i> , 622 So. 2d 982 (Fla. 1993).....	4, 26
<i>Hurst v. State</i> , 18 So. 3d 975 (Fla. 2009).....	48, 49

TABLE OF AUTHORITIES – cont’d

Cases	Page(s)
<i>Iacono v. State</i> , 930 So. 2d 829 (Fla. 4th DCA 2006).....	47, 50
<i>Jackson v. State</i> , 347 So. 3d 292 (Fla. 2022).....	48, 50
<i>J.B. v. State</i> , 705 So. 2d 1376 (Fla. 1998).....	35
<i>Johnson v. State</i> , 22 So. 3d 840 (Fla. 1st DCA 2009).....	48, 50
<i>Johnson v. State</i> , 840 So. 2d 369 (Fla. 1st DCA 2003).....	76-77
<i>Knight v. State</i> , 211 So. 3d 1 (Fla. 2016).....	44
<i>Kocaker v. State</i> , 311 So. 3d 814 (Fla. 2020).....	48, 84
<i>Lockett v. Ohio</i> , 438 U.S. 586 (1978).....	<i>passim</i>
<i>Lopez v. Singletary</i> , 634 So. 2d 1054 (Fla. 1993).....	44
<i>McClenney v. State</i> , 351 So. 3d 649 (Fla. 3d DCA 2022).....	47, 50
<i>Morris v. Sec’y, Dept. of Corr.</i> , 677 F.3d 1117 (11th Cir. 2012).....	70
<i>Muhammad v. State</i> , 603 So. 2d 488 (Fla. 1992).....	44
<i>Neder v. United States</i> , 527 U.S. 1, 7 (1999).....	34, 36, 41
<i>Osborne v. State</i> , 912 So. 2d 58 (Fla. 4th DCA 2005).....	76
<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010).....	61
<i>Parker v. State</i> , 3 So. 3d 974 (Fla. 2009).....	84
<i>Proffitt v. Florida</i> , 428 U.S. 242 (1976).....	<i>passim</i>
<i>Reynolds v. State</i> , 99 So. 3d 459 (Fla. 2012).....	48, 50

TABLE OF AUTHORITIES – cont’d

Cases	Page(s)
<i>Ring v. Arizona</i> , 536 U.S. 584 (2002).....	39
<i>Rodriguez v. State</i> , 223 So. 3d 1095 (Fla. 3d DCA 2017).....	47, 50
<i>Romero v. State</i> , 48 So. 3d 971 (Fla. 3d DCA 2010).....	76
<i>Rose v. State</i> , 985 So. 2d 500 (Fla. 2008).....	30
<i>Smith v. State</i> , 21 So. 3d 72 (Fla. 1st DCA 2009).....	47, 51
<i>Stano v. Dugger</i> , 921 F.2d 1125 (11th Cir. 1991).....	73
<i>Stano v. State</i> , 520 So. 2d 278 (Fla. 1988).....	73
<i>State v. Dougan</i> , 202 So. 3d 363 (Fla. 2016).....	71
<i>State v. Gunsby</i> , 670 So. 2d 920 (Fla. 1996).....	71
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	<i>passim</i>
<i>Strozier v. Newsome</i> , 871 F. 2d 995, 1000 (11th Cir. 1989).....	49
<i>Sullivan v. Louisiana</i> , 508 U.S. 275 (1993).....	41-42
<i>Tollett v. Henderson</i> , 411 U.S. 258 (1973).....	73
<i>Traylor v. State</i> , 596 So. 2d 957 (Fla. 1992).....	54
<i>Troy v. State</i> , 57 So. 3d 828 (Fla. 2011).....	30
<i>United States v. Gonzalez-Lopez</i> , 548 U.S. 140 (2006).....	34, 36, 41
<i>United States v. Williams</i> , 29 F.4th 1306 (11th Cir. 2022).....	73
<i>Ventura v. State</i> , 2 So. 3d 194 (Fla. 2009).....	29, 52

TABLE OF AUTHORITIES – cont’d

Cases	Page(s)
<i>Von Moltke v. Gillies</i> , 332 U.S. 708 (1948).....	37
<i>Weaver v. Massachusetts</i> , 582 U.S. 286 (2017).....	59, 65
<i>Wiggins v. Smith</i> , 539 U.S. 510 (2003).....	58, 64, 68
<i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976).....	86
Constitutional Provisions	Page(s)
U.S. Const. amend. V.....	41
U.S. Const. amend. VI.....	<i>passim</i>
U.S. Const. amend. VIII	<i>passim</i>
U.S. Const. amend. XIV	<i>passim</i>
Art. I, § 21, Fla. Const.....	44, 47
Statutory Provisions	Page(s)
Fla. Stat. § 921.141	<i>passim</i>
Rules	Page(s)
Fla. R. App. P. 9.320	1
Fla. R. Crim. P. 3.851	4, 44, 48, 84
Fla. R. Crim. P. 3.852.....	65

REQUEST FOR ORAL ARGUMENT

Jesse Bell (“Bell”) respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case. The resolution of the issues in this action will determine whether Bell lives or dies, and a complete understanding of the factual, legal, and procedural history of this case is critical to the proper disposition of this appeal. This Court has not hesitated to allow oral arguments in other capital cases in a similar posture. A full opportunity to air the issues through oral argument is appropriate in this case, given the seriousness of the claims at issue and the penalty that the State seeks to impose on Bell.

PRELIMINARY STATEMENT REGARDING REFERENCES

References to the record on appeal for Bell’s direct appeal in Florida Supreme Court Case No.: SC2020-0472 are of the form R[page number(s)].

References to the current post-conviction record on appeal before this Court in Florida Supreme Court Case No.: SC2024-1264 are of the form PC[page number(s)].

STATEMENT OF THE CASE AND FACTS

I. Procedural History

On October 29, 2019, a grand jury indicted Bell and his co-defendant Barry Noetzel (“Noetzel”) with one count of first-degree murder, one count of attempted first-degree murder of a correctional officer with a deadly weapon, conspiracy to commit first-degree murder, and two counts of possession of contraband in prison, for events that occurred at Mayo Correctional Institution on the morning of June 26, 2019. R368-70. Bell appeared at his first appearance proceeding on December 5, 2019, where Attorney Robert Baker III of Regional Criminal Conflict Counsel was appointed to represent Bell, irrespective of Bell’s objection to having counsel represent him. R643. Bell next appeared at a December 13, 2019 hearing, where Bell in the following order: waived his right to counsel and proceeded pro se (R151); then entered a no contest plea to all charges in the indictment (R172); then waived his right to a jury trial (R180). The trial court also ordered a competency evaluation of Bell to take place before the sentencing proceedings. R174-79, 182.

A competency evaluation was conducted in Bell’s prison cell by psychiatrist Dr. Umesh Mhatre on February 1, 2020. R198-204.

Along with the clinical interview, Dr. Mhatre reviewed arresting officers' reports and records from the Department of Corrections. R199. Among other details, the Department of Corrections records that Dr. Mhatre reviewed indicated that Bell was sexually abused when he was five years old. R199. Bell and Noetzel's joint penalty phase proceedings commenced on February 21, 2020. R432. Attorney Baker was appointed as standby counsel for Bell, as Bell informed the trial court that Baker had already been helping him. R438.

During the penalty phase proceeding, the State called several witnesses in support of proving aggravating factors for death penalty consideration. R456-598. Bell called no witnesses and testified on his own behalf after the State rested its case. R599-603. After noting that Bell had presented some mitigation, the trial court ordered a presentence investigation "in an abundance of caution." R621-22. A six-page Pre-Sentence Investigation (PSI) report was prepared, at the conclusion of which it stated that the death penalty is warranted. R647-52. Bell was formally sentenced to death on March 13, 2020. R356. Bell appealed his conviction and sentence, which were affirmed by this Court on direct appeal. *Bell v. State*, 336 So. 3d 211,

215-16 (Fla. 2022). A writ of certiorari was denied by the United States Supreme Court (“USSC”) on October 3, 2022. *Bell v. Florida*, 143 S. Ct. 184 (2022).

Capital Collateral Regional Counsel-Middle Region (“CCRC-M”) was appointed to represent Bell in his state post-conviction collateral proceedings on April 25, 2022. PC55. On December 26, 2023, Bell filed an Amended Motion to Vacate Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851 (“Motion”) and the motion’s corresponding appendix. PC852-1083. The State filed a Second Amended Answer to Bell’s Amended Florida Rule of Criminal Procedure 3.851 Motion on March 12, 2024. PC1344-1418. A *Huff*¹ hearing was held on June 4, 2024, where CCRC-M argued that an evidentiary hearing should be granted on all three claims raised in the December 26, 2023 Motion. PC1506-59. On July 18, 2024, the trial court issued an Order Denying Motion for Evidentiary Hearing, and Summarily Denying Amended Initial Rule 3.851 Motion, summarily denying relief on all claims without an evidentiary hearing. PC1560-1650. On August 16, 2024, Bell timely filed a notice

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

of appeal from the trial court's July 18, 2024 order. PC1651-53.² This timely appeal follows.

II. Statement of Facts

Bell and Noetzel shared a cell as inmates at Mayo Correctional Institution ("Mayo CI") in 2019. On June 26, 2019, Bell and Noetzel killed inmate Donald Eastwood ("Eastwood") and hid his body in their cell. Bell and Noetzel then subsequently stabbed correctional officer James Newman ("Officer Newman"). Officer Newman survived. Bell and Noetzel immediately admitted to killing Eastwood after the attack on Officer Newman, and both were transferred from Mayo CI to Florida State Prison ("FSP") immediately following the events of June 26, 2019. While at FSP, Bell was subjected to abuse and mistreatment by the guards as retribution for the fact that he had a charge against a correctional officer. The abuse began immediately upon Bell being apprehended at Mayo CI, where guards threatened to kill him, and made Bell and Noetzel remain confined for an extended period of time covered in chemical agents. When Bell and Noetzel

² A clerical error in the notice of appeal listed the trial court order date as July 19, 2024. The correct date for the trial court order is July 18, 2024.

arrived at FSP, they were in a van that had chemical agents in it and the heat turned up. The driver of the van kept hitting the brakes, to make the ride more uncomfortable and dangerous for them.

During his time at FSP the abuse was so prevalent that Bell believed that he would not have survived there much longer, had he litigated for a life sentence. The abuse included consistent beatings, and Bell particularly recalls being taken to an X-ray room where there were no cameras for what he believed was a medical callout to address a metal wire in his stomach. There was no medical callout for an X-ray. Bell was taken to that room because there were no cameras inside. Once there, he was beat up by correctional officers. Bell was also deprived of food, often receiving what are known as “ghost trays” from FSP staff, which were trays that had no food on them.

CCRC-M discovered evidence during their post-conviction investigation that corroborates the abuse Bell suffered from FSP staff because he had a charge against a correctional officer. CCRC-M interviewed Mitchell Womack and Leo Boatman, both of whom were housed with Bell on the “Q-wing” of FSP. They subsequently provided affidavits in support of what Bell is alleging about FSP. These affidavits were filed as appendices to Bell’s Motion. PC935-37; 939-

42.

Mitchell Womack (“Womack”) spoke of the abuse at FSP as follows:

“Bell told me a bit about the Mayo experience, including the fact that after he was detained, guards at Mayo would gas him with chemical agents while falsely accusing him of “resisting.” Bell agreed to meet with an FDLE agent on this case, because of the abuse he was receiving at Mayo.”

...

“After Bell arrived at FSP, he told me about the threats he was receiving from FSP staff saying they were going to “mess him up.” Guards would also sometimes deny him meals, giving him “ghost trays” instead.”

...

“All this abuse I recall Bell receiving at FSP happened in June or July of 2019, which included the “ghost trays” and what I suspect were beatdowns during weekend medical callouts. You see, administrative staff were usually not in the building on the weekends, so the guards would jump on people during weekend medical callouts. I warned Bell about the weekend medical callouts. I even remember overhearing a guard tell Bell that it was not a good idea to go to medical callouts on the weekends.”

...

“FSP guards were known for targeting inmates who were charged with attacking fellow guards and law enforcement officers.”

“Besides the beatings during weekend medical callouts and “ghost trays,” I remember Bell was also placed in a Plexi-glass room, which was a high security cell with no AC in the middle of summer.”

“I was on Q-wing at FSP for eight months and recall the regular management wing of FSP was even worse than Q-wing, which was max management. The guards had even more opportunities to jump on inmates in the regular management section of FSP. I even warned Bell that the

guards had more opportunity to jump inmates in regular management.”

PC880-81; 936-37. As was alleged in Bell’s Motion, Womack was available and willing to testify at an evidentiary hearing on Bell’s Motion. PC881. Another inmate on Q-wing at FSP who befriended Bell during his pretrial proceedings is Leo Boatman (“Boatman”). As was also alleged in Bell’s Motion, Boatman was available to testify at an evidentiary hearing about the torturous environment at FSP, and summarized his experiences as follows:

“When Bell and his co-defendant Noetzel arrived at FSP, they were in a van that had chemical agents in it and the heat turned up. The driver of the van kept hitting the brakes, to make the ride more uncomfortable and dangerous for them.”

...

“FSP was a very abusive environment because of mistreatment by the staff. I’ll try to describe the place a bit. Q-wing of FSP was max management and with only 24 cells. People on max got less freedoms than the regular inmates who got rec 1 to 3 times a week. Max management was located right above the death chamber, and “white shirts” were always coming in that area. Cameras were everywhere, so it was difficult for the guards to mess with the inmates. Inmates who had some type of charge for harming a cop or correctional officer were particularly targeted for abuse.”

Weekend medical callouts – It was a well-known secret that if you went to the medical unit, they didn’t have a camera in that room, so they could close the door and the guards would jump you there. They would also sometimes

jump on you in the back area. They painted the window where you take your shower, and the guards would jump on people in the shower. On Q-wing at FSP, they would pull you for a medical callout and then the guards would jump on you during the medical call out. The guards never beat me personally, but they would threaten me while walking by, talking about how they choked another inmate. The nurse would even make comments to the guards, like "So, you gonna get this one?" or "Are we whooping this one?" Some guards would warn inmates not to go on medical callouts. Beatings would typically happen on the weekends when administration was not in the building, and the office was not fully staffed.

“Messing with our food – Food related abuse was a major way of punishing people on Q-Wing. Guards would give a person an empty tray and not get caught on camera. And for guys with a (religious diet) or “RDP,” guards would empty out the bags and just put the empty bags back on the trays. This was all common knowledge and happens to lots of people, especially if you had a charge related to hurting a guard. The abuse at FSP was horrific. I recall Julie Jones tried to do something about it, but they got rid of her.”

“Specific to Bell, I recall both he and his co-defendant Noetzel complaining about abuse. I heard Bell talking about mistreatment to somebody else. Bell may not have told me directly, but I do remember the conversation. Discussions about beatings probably took place in the first 4-5 months that Bell was at FSP. Again, “ghost trays” were common, especially if the guards thought you had a charge for attacking one of their own.”

“I don’t think Bell could take the abuse and oppression anymore. He was getting beaten and they were also dragging out his six-month CM review. Bell was just so disheartened and said the only way to make it stop was to “tap out.” I was on CM myself for 16 years solid and never

got any type of review under the alleged rules. Never getting enough rec, nor library access, on top of the beatings, ghost trays, and other games -You burn out. I believe that is what happened to Bell. He burned out.”

PC881-82; 940-41.

While incarcerated at FSP, Bell wrote an August 22, 2019 letter to the Lafayette County Attorney stating that he had been repeatedly told that he would be charged with capital murder for the inmate death on June 26, 2019, but that had not happened for two months. R9. Bell also asked when the grand jury would be convened in his case and stated in the letter that he wanted to implement his right to a speedy trial. R9. On October 15, 2019, Bell filed a pro se demand for speedy trial. R11. On October 29, 2019, Bell and Noetzel were indicted for first-degree murder and attempted first-degree murder for the murder of inmate Donald Eastwood and the attempted murder of correctional officer James Newman that occurred on June 26, 2019. R368-70. Although Bell was arrested and transferred from Mayo CI to FSP directly after the murder and attempted murder occurred on June 26, 2019, Bell did not appear at his first appearance and arraignment on these charges until December 5, 2019, where he was finally appointed counsel. R624-45.

The State had information indicating that Bell was being abused by FSP staff yet failed to apprise the trial court. On October 9, 2019, an investigator for the Lafayette County State Attorney's Office named J.T. Williams ("Investigator Williams") visited Bell at FSP for the purpose of a recorded investigative interview. Bell told Investigator Williams about the abuse, which Williams apparently found funny, as he simply laughed, said it was "expected," and acknowledged what Bell told him regarding the threats from FDOC staff that started initially when he was apprehended at Mayo CI before it was clarified that the beatings happened when Bell arrived at FSP. (Hear Exhibit 20 at 38:45-39:42).

Bell appeared at his first appearance proceeding on December 5, 2019, where Robert Baker III of Regional Criminal Conflict Counsel ("Attorney Baker") was appointed to represent Bell, irrespective of Bell's objection to having counsel represent him:

MR. WEED: All right. So Mr. Baker is the attorney of record, so further motions have to be heard whether the defendant's going to represent himself. It's not ambiguous right now whether Mr. Bell is representing himself; he's represented by Mr. Baker. Are we correct?

THE COURT: He - - the Court has appointed the Office of the Public Defender. The public defender has withdrawn, and conflict counsel has been appointed. I just signed the

document.

R643-44. The record is clear that Attorney Baker was Bell's counsel at the conclusion of the December 5, 2019 hearing. However, Attorney Baker acknowledged that he understood that Bell had indicated that he wished to waive his counsel and that the issue would be determined at a future hearing. R641-42. Bell also indicated at his First Appearance that he wished to plead guilty and stated that he "just want[ed] to get this over with as quick as possible." R632-33.

Days later, while still being represented by Attorney Baker, Bell obtained a list of the State's discovery exhibits on December 11, 2019, of which Baker was also served. R38-52. The discovery exhibits listed Bell's October 9, 2019 interview with Investigator Williams as one of the exhibits, identifying it as "11 G. VIDEOS: DVD INITIALED BY JESSE BELL DURING INTERVIEW WITH JT WILLIAMS." R45.

Bell was housed on the "Q-wing" of FSP awaiting trial when he waived his right to counsel and a penalty phase jury on December 13, 2019. A pre-trial motion and plea hearing was held on December 13, 2019. Attorney Baker was present for the hearing. R130. During the hearing, Bell indicated that he wished to proceed without an attorney and subsequently waived his counsel for the proceedings.

R151. Bell then entered a no contest plea to all charges. R172. Bell then indicated to the trial court that he wanted to waive his sentencing jury and also stated twice that he wanted to “get this over with as soon as possible.” R172, 175-76. Bell subsequently waived his sentencing jury. R180. Bell proceeded pro-se at his joint trial with co-defendant Noetzel on February 21, 2020.

Bell and Noetzel’s joint trial was held on February 21, 2020. R432-623. Attorney Baker was present as standby counsel. The State offered evidence and testimony to the following. The morning of June 26, 2019, Bell and Noetzel both stabbed Officer Newman in the chow hall at Mayo CI. R472. Officer Newman survived the assault. Directly following the attack on Officer Newman, Bell stated that there was a “dead chomo” in his cell. R463. Correctional officers entered Bell and Noetzel’s cell and found the body of inmate Donald Eastwood. R465; 474-76. Bell and Noetzel both confessed to jointly planning and executing the murder of Eastwood and the subsequent attack on Officer Newman. Bell gave two audio-taped interviews to law enforcement, parts of which were played in court.³ Bell’s first

³ Noetzel also gave two audio-taped interviews to law enforcement in which he confessed to jointly planning and committing the murder of

interview took place on June 26, 2019 at Mayo CI with Florida Department of Law Enforcement Investigator Craig Riley. R490-509. Bell's second interview took place on October 9, 2019 at FSP with State Attorney's Office Investigator J.T. Williams. R562-87.

Bell explained during his interviews that he and Noetzel attacked Officer Newman because Newman was always messing with them for no reason. For example, Newman tore up pictures of Bell's deceased father. R492. Bell also explained that the murder of Eastwood was a practice run for the subsequent attack on Officer Newman, and Eastwood was chosen as a target because of the perception that he was gay and a child molester. R495-96; R576.

Bell called no witnesses and presented minimal mitigation at trial. Bell entered Dr. Umesh Mhatre's February 2, 2020 evaluation report into evidence, which explained that Bell had diagnoses for Generalized Anxiety Disorder and Major Depressive Disorder and referenced that Bell's Florida Department of Corrections ("FDOC") records showed a history of sexual abuse when he was five years old. R600; 201. Dr. Mhatre's report concluded that Bell was competent to

inmate Eastwood and attack on Officer Newman with Bell. R511; R516-60.

proceed. R204. Bell also testified briefly in his defense, explaining that: he had never assaulted any correctional officers prior to Officer Newman; he suffered with depression; he had come forward and pled guilty; his family loved him; he had good prison behavior after the homicide; and he was an honest person. R600-601. No other mitigation was presented.

Bell was adjudicated guilty and sentenced to death by the trial court on March 13, 2020. R418-31. Concerning the aggravating factors found by the trial court, this Court observed:

the court found that the State proved the existence of the following aggravators beyond a reasonable doubt, with the noted weight: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment (great weight); (2) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person (great weight); (3) the capital felony was especially heinous, atrocious, or cruel (HAC) (very great weight); and (4) the capital felony was committed in a cold, calculated, and premeditated manner (CCP) without any pretense of moral or legal justification (very great weight).

Bell, 336 So. 3d at 215. Concerning the mitigating factors found by the trial court, this Court observed

the court found the following nonstatutory mitigators applicable and assigned each the indicated weight: (1) Bell took responsibility for his conduct and cooperated during the investigation of and prosecution for the killing of

Eastwood (little weight); (2) Bell exhibited appropriate courtroom behavior (little weight); (3) Bell had never assaulted any corrections officers until the attack on Officer Newman (no weight); (4) Bell's family loves him (slight weight); and (5) Bell had been previously diagnosed with and treated for depression (little weight).

Bell, 336 So. 3d at 216.

In post-conviction, CCRC-M discovered and presented substantial mitigation not presented at trial, which was separated into seven broad categories:⁴

A. The homicide of Donald Eastwood was committed while Bell was under the influence of extreme mental or emotional disturbance, pursuant to Fla. Stat. § 921.141(7)(b).

Clinical and forensic psychologist Dr. James Campbell opined in post-conviction that Bell was under the influence of extreme mental or emotional disturbance at the time the murder was committed due to a combination of many factors, including “Bell's inability to handle stress because of his PTSD and abusive childhood and the stress caused by the threats and violence he was

⁴ A full summary of the seven categories of mitigation submitted to the trial court in Bell's Motion can be found at PC899-913. CCRC-M also submitted the reports of four defense experts:- Dr. James Campbell, Dr. Bryanna Fox, Dr. Kristopher Kaliebe, and Dr. Michael Quinones- as support for Bell's categories of mitigation. Their expert reports can be found at PC1444-93.

experiencing from other inmates.” PC1452. Bell entered the Kansas Department of Corrections as a young adult and was transferred to FDOC in 2013 on an interstate compact. *See* PC1447. At the time of the homicide Bell was subject to constant violence at the hands of other inmates who thought he was a cop or snitch because he was transferred to Florida on an interstate compact and was not entered in the computer in the same manner as other inmates. PC1447-48. Bell was extorted and threatened by prison gangs- the Latin Kings, Aryan Brotherhood, and Bloods- because they believed he was a snitch and also because he had renounced his former membership in the Aryan Brotherhood. PC1447-48. Bell filed grievances with FDOC asking for help and protection and requesting to be transferred back to Kansas where he believed he would be safer, but these did not protect him. PC1447. Bell reported feeling trapped, like he had very few options to protect himself and that if he did nothing, he would be killed. It was in this intensely stressful situation that Bell decided to commit the homicide in a desperate attempt to get to death row so that he could have his own cell and be safe from the other inmates. PC1452.

Psychologist Dr. Michael Quinones also opined in post-conviction that Bell was operating under an extreme mental and emotional disturbance when he committed the homicide based on many factors, including a diagnosis of PTSD and Bell's experiences of serious threat and actual harm from other inmates while incarcerated with FDOC. PC1492. Bell described feeling ultimately hopeless about the possibility he could be safe in general population and expressed that he believed the only way he would feel safe during incarceration would be by being placed on death row where he would be permanently segregated from general population. PC1488. Bell reported that his rationale for planning and committing the murder with Noetzel was so that he could be placed on death row where he could ensure his safety in isolation. PC1488.

B. Bell has Post-Traumatic Stress Disorder and Complex Post-Traumatic Stress Disorder.

Dr. Campbell opined in post-conviction that Bell meets the criteria for Post-traumatic stress disorder (PTSD) as outlined by the DSM-V TR and has likely met the criteria since early childhood as a result of the physical abuse, emotional abuse, emotional neglect, and sexual abuse he experienced before his eighteenth birthday. PC1450.

Bell's PTSD and traumatic experiences have continued into adulthood, as he has experienced prolonged isolation, gang violence, as well as bullying and violence from FDOC correctional officers. PC1450. Bell's trauma can be described as complex, and the symptoms associated with complex trauma are intense enough to impair Bell's ability to function on a daily basis and make it difficult to think clearly or make sound judgements. PC1450.

Dr. Quinones has also opined in post-conviction that Bell suffers from chronic PTSD and Complex PTSD. PC1490. Regarding Bell's PTSD, he has had multiple experiences throughout his life, in both childhood and adulthood, whereby he was exposed to actual and threatened significant injury and physical harm, sexual violence, and threat of death. PC1490. Bell reported a history of many chronic PTSD symptoms, which included chronic hypervigilance from fear of threat and harm and persistent feelings of fear, anger, hopelessness, and distrust of others. PC1490

C. Bell suffered extreme childhood abuse and neglect, as evaluated by the Adverse Childhood Experiences Questionnaire.

Dr. Campbell, Dr. Quinones, and Dr. Bryanna Fox evaluated Bell's childhood experience using the Adverse Childhood Experiences

Questionnaire (“ACE”) and by reviewing evidence from collateral sources. Dr. Fox specifically opined that Bell experienced **nine of the ten** ACEs, including: physical abuse; sexual abuse; emotional abuse; emotional neglect; household substance abuse; witnessing household violence; household mental illness; parental separation/divorce; household member incarceration. PC1456-64. Research shows that the average person will experience 1 to 2 total ACEs (Felitti et al.,1998), while incarcerated adult offenders experience an average of about 4 total ACEs (Fox, Verona, & Fournier, 2019). PC1464. The level of ACEs experienced by Bell is well above the average for incarcerated adults, and about 500% greater than the American population. PC1464.

D. Research indicates that the childhood sexual abuse and mistreatment that Bell suffered could have affected his brain development and his overall development as he grew up.

It is highly likely that the sexual abuse and mistreatment that Bell suffered as a child affected his developing brain in a permanent way. Psychiatrist Dr. Kristopher Kaliebe opined in post-conviction concerning the impact that Bell’s traumatic experiences could have had on his brain development, including that childhood maltreatment can affect the development of the brain’s hippocampus

and amygdala, causing life-long changes. PC1478-79. There is compelling evidence that adults with maltreatment histories have smaller hippocampi than non-maltreated comparison subjects. PC1478-79. The amygdala plays a key role in processing emotions and is responsible for detecting and responding to threats and danger. PC1478-79. Structural or functional abnormalities in the amygdala have been observed in various psychiatric disorders. PC1478-79. Trauma, especially childhood trauma, can lead to overactivity of the amygdala, resulting in an individual reacting strongly to potential threats and/or reminders of trauma. PC1478-79.

E. Bell suffered severe and persistent violence from other inmates after entering the Florida Department of Corrections.

While incarcerated in Kansas, with no pending warrants or cases in Florida, Bell was inexplicably sent to Florida pursuant to an interstate compact on October 28, 2013. Once arriving in Florida, Bell was targeted by gang members for threats, extortion, and physical abuse. Bell had to be transferred amongst multiple prisons to protect his safety. In August of 2015, Bell filed a grievance requesting protection while on confinement at Santa Rosa

Correctional Institution, explaining that he was being threatened and exhorted by the Aryan Brotherhood because they believed he was either a cop or a snitch since he had denounced his gang membership upon arriving in Florida and had been transferred on an interstate compact. PC970-72. The Aryan Brotherhood threatened to stab Bell if he did not purchase items for them from canteen, so he requested protective management. PC970-72. Bell expressed his desperation: "I'm afraid for my safety and life, please somebody help me." PC971.

By November of 2015, Bell had been transferred to the Tomoka Correctional Institution and was again requesting protection because he was being harassed by the Bloods prison gang. PC974-75. The Bloods told Bell that they had somehow googled his name and believed he was a corrections officer from Kansas. They told Bell that he had to pay, or they would "beat [his] cracker ass." PC974-75.

By April of 2016, Bell had been transferred to Charlotte Correctional Institution and was again asking for help. PC981-84. This time he was accosted by members of the Latin Kings and given a note saying that if he did not pay \$100 by the end of the day, then he would be dead. PC982. By the fall of 2016, Bell was moved to Jefferson Correctional Institution and was again requesting

protective management because he was in fear for his life from the Bloods. PC989-90. A member of the gang pulled a knife on Bell, and he was assaulted by three inmates. PC989-90.

By February of 2017, Bell had been transferred to Wakulla Annex for his own safety, but he was still in constant danger from his fellow inmates. Bell filed a grievance begging for anyone at FDOC to help him. PC998-1001. He desperately wanted to be sent back to safer, less violent prisons in Kansas: "... I beg you, please, please help me! I just want to be safe and do my time. So will you please send me to another p.m. [protective management] unit at another institution or even back to Kansas?" PC1001.

By November of 2017, Bell was at the Northwest Florida Reception Center Annex and again requesting protective management. PC1008-1012. The Bloods had issued a "kill on sight" for Bell, and had surrounded him with knives, from which he barely escaped. PC1008-12. Bell's own words show his distressed mental: "My life is in danger here at NWFRC and I ask that I be granted a Protective Management transfer or Placement. Please help me. Isn't it part of the Interstate Compact that Florida will keep me safe?" PC1011. By November of 2018, Bell was at Martin Correctional

Institution, and again requesting protective management. PC1032-33. Bloods put a knife to Bell's stomach, stole his property, and told him that if he did not give them his canteen, they would "life flight" him. PC1033.

By January of 2019, Bell had moved to Jackson Correctional Institution and was again seeking FDOC protection. PC1046-52. Bloods at Jackson CI were targeting Bell because he was a former member of the Aryan Brotherhood and still believed to be a snitch. PC1046. Bell was attacked with razor blades and cut on his stomach. PC1046.

By February of 2019, Bell was transferred to Mayo CI and was again asking to be sent back to Kansas because of the ongoing violence he was experiencing in Florida. Bell described his desperate situation in a letter that he submitted to FDOC on May 13, 2019. Bell's own contemporaneous words speak to his distressed state of mind in the weeks leading up to the homicide:

Since coming to Florida in October of 2013, my life has been hell. I have been assaulted repeatedly, stabbed twice, cut with razors, kidnapped and held hostage in my cell and more, all because I'm an interstate compact inmate and the Blood gang members think that because I'm an interstate compact inmate I must be a former police officer or corrections officer sent from my state for protection. It's

so bad that I have been transferred 11 times in 6 years ...

I have changed my life. I'm trying to stay out of trouble. I've did a renunciation of being an Aryan Brotherhood, in effect leaving the gang and I'm trying very hard to do the right thing and not catch another case in prison.

I need your help. My safety is very much in jeopardy here in Florida and I need to be brought back to Kansas. Please! The Blood Gang here in Florida has put a K.O.S. (kill on sight) contract out on me and I have no where to turn ... I'm not safe here in Florida and it's only a matter of time till I'm killed or I kill someone trying to protect myself! I don't want to be hurt or hurt anyone. I just want to be left alone and do my time ... Please help me. I'm in dire straights here."

PC1069-70. Desperate to reach a place of safety from the constant threats and violence, an exhausted and emotionally disturbed Bell participated in the homicide of Eastwood and attempted homicide of Officer Newman on June 26, 2019.

F. Bell experienced years of severe isolation due to being put in solitary confinement while incarcerated.

Dr. Kaliebe opined in post-conviction to the potential effect that years of isolation and solitary confinement could have on Bell's mental health. PC1478. There are significant associations between solitary confinement and worsened general mental health, including worsening psychotic and hostility symptoms. PC1478. Solitary confinement was associated with an increased risk for self-harm and

with later death in the community by any cause, including unnatural causes. PC1478.

G. Bell's family and friends love him, and they would suffer grievous harm if his death sentence were carried out.

Bell is a unique individual, and his life has value. Bell has family and friends who love him and would be grievously harmed if his death sentence were carried out. Bell's life-long friend Troy Jennings, adult son Anthony Fenton, and Anthony's mother Brandi Jacobs were all available to testify to the important relationship they each share with Bell and how important he is to each of their lives.

At the June 4, 2024 *Huff* hearing, CCRC-M argued that the trial court should grant an evidentiary hearing so that evidence supporting Bell's three claims raised in his Motion could be entered into the record, including: evidence of the abuse Bell suffered at Florida State Prison; evidence of trial counsel's trial strategy related to that abuse; and evidence supporting Bell's seven categories of mitigation, including the testimony of four expert witnesses and three lay witnesses. PC1513-14; 1516-17; 1519-20. The trial court denied an evidentiary hearing on all claims.

SUMMARY OF ARGUMENT

ARGUMENT I: Due process requires that Bell be granted a new penalty phase because his waivers of counsel and a penalty phase jury were not voluntary. Bell's involuntary waivers caused a complete deprivation of his constitutional right to counsel and a jury, resulting in fundamental error that requires an automatic vacation of his death sentence. Bell's December 13, 2019 waivers of counsel and a jury were rendered involuntary by severe abuse and mistreatment that he suffered at the hands of correctional officers at FSP. Bell did not want to waive his counsel and jury, but he waived to speed up his penalty phase proceedings and hasten his expected death sentence so that he could be transferred from FSP to death row at Union Correctional Institution as quickly as possible to escape the abuse at FSP. Statements from other FSP inmates discovered in post-conviction corroborate the abuse Bell suffered. The trial court erred in summarily denying relief on this claim without holding an evidentiary hearing.

ARGUMENT II: Bell's trial counsel was ineffective for failing to investigate the available evidence that Bell was being abused at FSP and for failing to inform the trial court of the effect that the abuse

would have on the voluntariness of Bell's waivers of counsel and a jury. Trial counsel was ineffective for failing to review Bell's recorded October 9, 2019 interview with Investigator Williams, where Bell indicated he was being abused. Trial counsel was also ineffective for failing to locate and interview Mitchell Womack and Leo Boatman, inmates who were housed with Bell on the "Q-wing" of Florida State Prison and who corroborated the abuse. Bell was prejudiced by trial counsel's failure to conduct an adequate investigation into the abuse because there is a reasonable probability that Bell would not have waived his counsel and jury if trial counsel had conducted an adequate investigation and subsequently informed the trial court of the abuse.

Bell was further prejudiced because he was deprived of his right to an individualized sentencing determination by his involuntary waiver of counsel, and there is a reasonable probability Bell would have received a life-sentence instead of death if he had not been forced to waive his counsel. The trial court erred in summarily denying relief on this claim without holding an evidentiary hearing

ARGUMENT III: Bell was entitled to an individualized sentencing determination considering the unique circumstances of his

life and background as potential mitigation. There is significant and compelling mitigation that weighs against Bell's death sentence that the trial court did not have the benefit of considering for Bell's sentencing due to Bell's involuntary waiver of counsel. Seven broad categories of mitigation were discovered and presented in post-conviction, including: Bell was under the influence of extreme mental or emotional disturbance at the time of the homicide; he has a diagnosis of Post-traumatic Stress Disorder; he suffered severe childhood abuse and neglect; Bell experienced severe violence from other inmates while incarcerated with FDOC; and Bell has family and friends who love him and would be grievously injured if he were executed. The trial court erred in summarily denying this claim without an evidentiary hearing.

STANDARD OF REVIEW

Since the trial court denied post-conviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in Bell's December 26, 2023 Motion and in this current appeal as true to the extent that they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009) (citing *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000)). Further,

this Court reviews the trial court's application of the law to the facts de novo. *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008) (internal citations omitted); *Gore v. State*, 846 So. 2d 461, 468 (Fla. 2003) (internal citation omitted). The trial court's decision whether to grant an evidentiary hearing is likewise subject to de novo review. *Troy v. State*, 57 So. 3d 828, 834 (Fla. 2011) (internal citation omitted); *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008) (internal citation omitted).

ARGUMENT

ARGUMENT I

THE TRIAL COURT ERRED IN SUMMARILY DENYING BELL'S CLAIM THAT BELL'S WAIVERS OF COUNSEL AND A PENALTY PHASE JURY WERE NOT VOLUNTARY, CONTRARY TO HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION.

Due process requires that Bell be granted a new penalty phase because his waivers of counsel and a penalty phase jury were not voluntary. Bell's involuntary waivers caused a complete deprivation of his constitutional right to counsel and a jury, resulting in fundamental error that requires an automatic vacation of his death sentence. Bell was incarcerated at FSP when he waived his counsel and penalty phase jury on December 13, 2019. While at FSP, Bell was subjected to abuse and mistreatment from correctional officers and staff as retribution for

the fact that he had a charge for attacking a correctional officer. Bell was subjected to physical abuse from FSP staff and was also deprived of food, often receiving what are known as “ghost trays,” which were trays that had no food on them.

During his time at FSP the abuse was so prevalent that Bell believed that he would not have survived there much longer, had he litigated for a life sentence. Bell did not want to waive his counsel and jury, but he felt compelled to do so in a desperate attempt to escape the abuse and mistreatment that he was suffering at FSP. Bell waived his counsel and jury to speed up his penalty phase proceedings and hasten his expected death sentence so that he could escape the abuse at FSP by being transferred to death row at Union Correctional Institution as quickly as possible.

The trial court erred in summarily denying Claim One without an evidentiary hearing. Bell’s waivers were not voluntary, and he must be granted a new penalty phase trial to remedy this fundamental error in his capital case.⁵

⁵ The trial court’s findings on Claim One in the July 18, 2024 denial order are not organized in the same manner as Bell’s Motion. To avoid confusion, this brief will first present Claim One and its subclaims to

A. The trial court erred in summarily denying Bell’s claim that due to the severe abuse and deprivation that Bell suffered from Florida State Prison staff, Bell’s waiver of counsel was rendered involuntary, which resulted in fundamental error requiring that he be granted new penalty phase proceedings.

Bell has a fundamental constitutional right to counsel under the federal Sixth Amendment. *See Gideon v. Wainwright*, 372 U.S. 335 (1963). Bell raises the following claim for relief under his federal Sixth Amendment right to counsel, which is made obligatory upon the states by the Due Process Clause of the federal Fourteenth Amendment. *Id.* Bell also raises the following claim for relief under his federal Fourteenth Amendment right to Due Process.

Due process requires that Bell be granted a new penalty phase because his waiver of counsel for his capital proceedings was not knowing, intelligent, and voluntary. *See Edwards v. Arizona*, 451 U.S. 477, 482 (1981) (“[W]aivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege.”); *Faretta v. California*, 422 U.S. 806 (1975) (concluding that a

this Court, and then address the trial court’s findings as to Claim One in a subsequent section.

defendant has a constitutional right to proceed without counsel in a state criminal trial as long as he knowingly, intelligently, and voluntarily chooses to do so); *Brady v. U.S.*, 397 U.S. 742, 748 (1970) (“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.”); *see also Figueroa-Sanabria v. State*, 366 So. 3d 1035, 1057 (Fla. 2023) (remanding for new penalty phase proceedings because capital defendant’s waiver of penalty phase counsel was not knowing, intelligent, and voluntary). Bell’s waiver of counsel could not be voluntary because he was forced to make this decision to escape abuse and mistreatment at the hands of correctional officers at Florida State Prison. Bell’s involuntary waiver of counsel was a fundamental error in his capital proceedings that requires his death sentence be automatically vacated and a new penalty phase trial granted.

The USSC has divided constitutional errors into two classes. The USSC describes the first class as “trial error,” because these errors “occurred during presentation of the case to the jury” and their effect may “be quantitatively assessed in the context of other evidence

presented in order to determine whether [they were] harmless beyond a reasonable doubt.” *Arizona v. Fulminante*, 499 U.S. 279, 307–308 (1991). The USSC describes the second class of constitutional error as “structural defects.” These errors “defy analysis by ‘harmless-error’ standards” because they “affec[t] the framework within which the trial proceeds,” and are not “simply an error in the trial process itself.” *Id.*, at 309–310. The USSC has recognized a limited class of constitutional errors that can never be considered harmless error. *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 149-50 (2006); *Neder v. United States*, 527 U.S. 1, 7-8 (1999); *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991); *Chapman v. California*, 386 U.S. 18, 23 (1967) (explaining that “there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error.”) (internal citations omitted). These errors are so intrinsically harmful as to require automatic reversal without regard to their effect on the outcome of the trial. *See Neder*, 527 U.S. at 7. The complete deprivation of the Sixth Amendment right to counsel qualifies as a structural error. *Gonzalez-Lopez*, 548 U.S. at 149-50; *Neder*, 527 U.S. at 7-8; *Chapman*, 386 U.S. at 43 (Stewart, J., concurring) (“When a defendant has been denied counsel at trial, we have refused to

consider claims that this constitutional error might have been harmless.”).

This Court has recognized the complete deprivation of the right to counsel during an entire proceeding- particularly the right to counsel during a penalty phase proceeding in a capital case- as a fundamental error. *Figueroa-Sanabria v. State*, 366 So. 3d 1035, 1055 (Fla. 2023). This Court has described fundamental errors as those that

permeate or saturate the trial with such basic invalidity as to lead to a reversal regardless of a timely objection,” *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960), and go to “the foundation of the case or the merits of the cause of action and [are] equivalent to a denial of due process,” *J.B. v. State*, 705 So. 2d 1376, 1378 (Fla. 1998).

Figueroa-Sanabria, 366 So. 3d at 1055. In *Figueroa-Sanabria*, this Court reversed a capital defendant’s death sentence and remanded to the trial court for a new penalty phase trial due to Figueroa’s involuntary waiver of penalty phase counsel. *Id.* at 1054-57. This Court found that Figueroa’s waiver of counsel could not be knowing, intelligent, or voluntary because the trial court misinformed Figueroa about the nature of his right to counsel at the penalty phase, thereby rendering his waiver invalid. *Id.*

Bell's involuntary waiver of counsel resulted in a complete deprivation of his Sixth Amendment constitutional right to counsel and his Fourteenth Amendment right to due process during his penalty phase. This constitutes both a structural error under the USSC's federal jurisprudence and a fundamental error under this Court's jurisprudence that requires Bell's death sentence be vacated and new penalty phase proceedings granted. *See Gonzalez-Lopez*, 548 U.S. at 149-50; *Neder*, 527 U.S. at 7-8; *Figueroa-Sanabria*, 366 So. 3d at 1057 (vacating death sentence and remanding for new penalty phase proceedings due to fundamental error caused by capital defendant's involuntary waiver of penalty phase counsel).⁶

“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” *Brady v. U.S.*, 397 U.S. 742, 748 (1970). This Court explained in *Figueroa-Sanabria v. State*:

⁶ *See also Brady v. State*, 910 So. 2d 388, 390–91 (Fla. 2d DCA 2005) (finding the denial of defendant's right to counsel during a probation revocation hearing was fundamental error that required reversal and remanding for a new hearing).

“[W]aivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege.” *Edwards v. Arizona*, 451 U.S. 477, 482, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) ... **Additionally, “[t]here must be both the capacity to make an understanding choice and an absence of subverting factors so that the choice is clearly free and responsible.”** *Von Moltke v. Gillies*, 332 U.S. 708, 729, 68 S.Ct. 316, 92 L.Ed. 309 (1948) (Frankfurter, J., separate opinion).

366 So. 3d 1035, 1054 (Fla. 2023) (emphasis added). A defendant may be asked to choose between a waiver and another course of action as long as the choice presented to him is not constitutionally offensive. *Id* (internal citation omitted).

Bell’s involuntary waiver of counsel was the result of subverting factors that prevented his choice from being free or responsible. Bell waived counsel to speed up his penalty phase proceedings and hasten his expected death sentence so that he could be transferred from FSP to death row at Union Correctional Institution as quickly as possible. Bell was forced to flee not only from an abusive environment, but particularly from the correctional officers who were supposed to keep him safe. Bell was aware that by waiving counsel he would significantly speed up his penalty phase proceedings because he would not have to wait for months, and possibly years,

as his appointed attorney investigated and prepared a detailed mitigation presentation. Bell did not want to waive his counsel. He was forced to do so by the abuse he was experiencing at FSP. Bell was presented with a choice that was constitutionally offensive—waive his counsel to expedite his proceedings so that he could escape from the abuse at FSP or exercise his rights and endure the abuse for possibly years as his counsel investigated his case for mitigation and then presented that mitigation at Bell’s penalty phase. The result of these extreme circumstances is that Bell’s waiver of counsel on December 13, 2019 was involuntary.

“[L]awyers in criminal courts are necessities, not luxuries. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). The presence and assistance of counsel is paramount, “as it affects a defendant's ability to ‘assert any other rights he may have.’” *Figueroa-Sanabria*, 366 So. 3d at 1057 (internal citation omitted). Bell had a right to an individualized sentencing determination considering the unique circumstances of his life and background as potential mitigation. See Fla. Stat. § 921.141(3) (the sentencing court will consider all mitigating circumstances); see also *Lockett v. Ohio*, 438 U.S. 586, 606 (1978) (holding that the federal Eighth and Fourteenth Amendments

require an individualized consideration of mitigating factors when determining the sentence in capital cases); *Proffitt v. Florida*, 428 U.S. 242, 251-53 (1976) (finding that Florida’s capital statutory sentencing procedures, which require the judge to consider each defendant’s specific mitigation factors and individual circumstances, were not unconstitutional). Bell could not assert this right at his penalty phase trial because he was forced to waive his counsel, thereby waiving any mitigation presentation that his counsel would have done.

The trial court erred in summarily denying this claim. PC1560-64.

B. The trial court erred in summarily denying Bell’s claim that due to the severe abuse and deprivation that Bell suffered from Florida State Prison staff, Bell’s waiver of a penalty phase jury was rendered involuntary, which resulted in fundamental error requiring that he be granted new penalty phase proceedings.

Bell has a fundamental constitutional right to a jury trial. *Duncan v. Louisiana*, 391 U.S. 145 (1968). Bell’s constitutional right to a jury trial extends to his penalty phase jury. *See Ring v. Arizona*, 536 U.S. 584, 589 (2002) (“Capital defendants ... are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment.”). Bell raises the following

claim for relief under his federal Sixth Amendment right to a jury, which is made obligatory upon the states by the Due Process Clause of the federal Fourteenth Amendment. *Duncan*, 391 U.S. at 149. Bell also raises the following claim for relief under his federal Fourteenth Amendment right to Due Process.

Due process requires that Bell be granted a new penalty phase because his waiver of his penalty phase jury was not knowing, intelligent, and voluntary. *See Grim v. State*, 971 So. 2d 85, 101 (Fla. 2007) (A capital defendant may waive his penalty phase jury, “provided the waiver is voluntary and intelligent.”); *see also Brady v. U.S.*, 397 U.S. 742, 748 (1970) (“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.”). Bell’s waiver of a jury could not be voluntary because he was forced to make this decision to escape abuse and mistreatment at the hands of correctional officers at Florida State Prison. Bell’s involuntary waiver of a jury was a fundamental error in his capital proceedings that requires his death sentence be automatically vacated and a new penalty phase trial granted.

The USSC has recognized a limited class of constitutional errors

that can never be considered harmless error. *See Gonzalez-Lopez*, 548 U.S. at 149-50; *Neder*, 527 U.S. at 7-8; *Fulminante*, 499 U.S. at 309-10; *Chapman v. California*, 386 U.S. at 23 (explaining that “there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error.”) (internal citations omitted). These structural errors are so intrinsically harmful as to require automatic reversal without regard to their effect on the outcome of the trial. *See Neder*, 527 U.S. at 7. The deprivation of the Sixth Amendment right to a jury trial can qualify as structural error in certain circumstances. *See Gonzalez-Lopez*, 548 U.S. at 149 (citing *Sullivan v. Louisiana*, 508 U.S. 275 (1993)).

In *Sullivan v. Louisiana*, Sullivan was found guilty by a jury of first-degree murder and sentenced to death. 508 U.S. 275, 277 (1993). Prior to the guilty verdict, the jury was given an erroneous and constitutionally deficient beyond-a-reasonable-doubt instruction, which the USSC explained effectively deprived Sullivan of his Sixth Amendment right to a jury trial and the interrelated Fifth Amendment right to require that the State prove his guilt beyond a reasonable doubt. *Id.* at 276-78.

The USSC explained that a deficient reasonable-doubt

instruction vitiates all of the jury's findings, and the premise for harmless-error analysis was absent because Sullivan had essentially received no jury verdict within the meaning of the Sixth Amendment. *Id.* at 278-81. The USSC granted Sullivan a new trial based on this structural error. While Sullivan's case is certainly distinguishable from Bell's case in some aspects, the *Sullivan* opinion indicates that the complete deprivation of a jury determination, whether that be through a deficient reasonable-doubt instruction in the guilt phase, or an involuntary waiver of a penalty phase jury, would certainly qualify as structural error requiring automatic reversal.

A defendant may be asked to choose between a waiver of a constitutional right and another course of action as long as the choice presented to him is not constitutionally offensive. *Figueroa-Sanabria*, 366 So. 3d at 1054. Bell was presented with a choice related to his penalty phase jury that was constitutionally offensive- waive his jury in order to expedite his proceedings so that he could escape from the abuse at FSP or exercise his rights and endure the abuse for longer as having a jury would cause his penalty phase trial to take longer for jury selection and jury deliberation.

Bell waived his jury to speed up his penalty phase proceedings

and hasten his expected death sentence so that he could be transferred from FSP to death row at Union Correctional Institution as quickly as possible. Bell was forced to flee not only from an abusive environment, but particularly from the correctional officers who were supposed to keep him safe. Bell was aware that by waiving a jury, he would significantly speed up his penalty phase proceedings. Bell did not want to waive his jury. He was forced to do so by the abuse he was experiencing at FSP. The result of these extreme circumstances is that Bell's waiver of a penalty phase jury on December 13, 2019 was involuntary.

The trial court erred in summarily denying this claim. PC1060-64.

The Trial Court's Findings

The trial court found that Bell's "allegations that his waivers of guilt-phase counsel, penalty-phase counsel, and a penalty-phase jury were involuntary are procedurally barred, because they could have been preserved and raised on direct appeal." PC1561 (internal citations omitted). The trial court further found that Bell's "assertion that [his] involuntary waivers of counsel and a penalty-phase jury constitute fundamental error does not surmount this procedural

bar.” PC1561 (internal citations omitted). Bell acknowledges the legal authority the trial court cites and also acknowledges Florida’s current procedural doctrine that claims that could have or should have been raised at trial or on direct appeal are procedurally barred in the Fla. R. Crim. P. 3.851 context.⁷

Bell does not dispute that this is the current doctrine in Florida, but instead argues that its application to the unique circumstances of his case will result in a denial of Due Process under the federal Fourteenth Amendment and access to the courts under Article I, Section 21 of the Florida Constitution and respectfully requests that this Court consider the unique circumstances of his case.

Fla. R. Crim. P. 3.851(e)(1) states that the

rule does not authorize relief based upon claims that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence. If claims that were raised on appeal or should have or could have been raised on appeal are contained in the motion, the memorandum of law shall contain a brief statement explaining why these claims are being raised on postconviction relief.

⁷ See PC1561 (citing Fla. R. Crim. P. 3.851(e)(1); *Knight v. State*, 211 So. 3d 1 (Fla. 2016); *Muhammad v. State*, 603 So. 2d 488 (Fla. 1992); *Lopez v. Singletary*, 634 So. 2d 1054 (Fla. 1993).

Claim One, Sub-claim A and Claim One, Sub-claim B of Bell's Motion were raised as claims of fundamental error with a brief statement explaining why those claims were being raised in post-conviction. PC868; 873. In short, these claims of fundamental error were raised in Bell's current post-conviction proceedings because they could not realistically be raised at trial or on direct appeal.

Even though the complete deprivation of counsel and a jury that resulted from Bell's involuntary waivers would have amounted to fundamental error requiring automatic reversal if raised on direct appeal, there was no way for Bell's appellate counsel to raise the issue on direct appeal. The evidence of the abuse at FSP that rendered Bell's waivers involuntary was not apparent on the face of the direct appeal record.

Further, the issue could not realistically be raised by Bell himself at trial. Bell, who was a vulnerable and mentally ill capital defendant, could not safely inform the trial court of the abuse without the assistance of his trial counsel because his safety was at risk. FSP staff attended every one of Bell's court dates, and Bell believed talking about the abuse would have put himself at peril if he explained in open court what was happening to him at FSP. As discussed further in

Argument II, if Bell's trial counsel had been aware of the abuse, counsel could have endeavored to discreetly inform the trial court of the fact that Bell was being abused by FSP staff.

As further discussed in Bell's contemporaneously filed Petition for Writ of Habeas Corpus, Bell also lacked the assistance of court-appointed counsel to help him navigate the abuse at FSP for months after he was arrested. Bell was not appointed counsel until his December 5, 2019 first appearance hearing. Bell erroneously sat alone, confused, and without the assistance of counsel for **161 days** from the date he was technically arrested on June 26, 2019 to the date of his first appearance on December 5, 2019. Bell could not himself realistically inform the trial court that he was being abused by FSP staff under these extreme circumstances, and he should not be penalized for his trial attorney's subsequent failure to discover and inform the trial court of the abuse.

Bell submits that under the very unique circumstances of his case- where a fundamental error occurred that could not realistically be alleged at the trial or direct appeal level- this Court should allow Bell's claim of fundamental error to be raised and corrected in the post-conviction context. This will protect Bell's federal Sixth Amendment

right to counsel and a jury, his federal Fourteenth Amendment right to due process, and his right to access the courts under Article I, Section 21 of the Florida Constitution.

The trial court also finds that Bell’s “subclaims that his waivers of counsel and a penalty-phase jury were involuntary ... are conclusively refuted by the record” because Bell testified during the December 13, 2019 waiver colloquies that he “was not threatened, forced or coerced into waiving counsel, entering a plea, or waiving a penalty-phase jury.” PC1562. The trial court states that “[w]hen a court determines whether an allegation is conclusively refuted by the record, it may rely on the sworn testimony the defendant has given.” PC1562 (citing *Smith v. State*, 21 So. 3d 72, 76 (Fla. 1st DCA 2009) and *Iacono v. State*, 930 So. 2d 829, 831 (Fla. 4th DCA 2006)). The trial court further states that “[a] defendant is bound by the answers he gives under oath when responding to the court’s questions”⁸ and concludes that Bell’s “testimony conclusively refutes his allegations that his

⁸ The trial court cites: *McClenney v. State*, 351 So. 3d 649, 652 (Fla. 3d DCA 2022); *Rodriguez v. State*, 223 So. 3d 1095 (Fla. 3d DCA 2017); *Henry v. State*, 920 So. 2d 1245, 1246 (Fla. 5th DCA 2006); *Alfred v. State*, 71 So. 3d 138, 139 (Fla. 4th DCA 2011).

waivers of guilt-phase counsel, penalty-phase counsel, and a penalty-phase jury were forced or coerced.”⁹ PC1562-63. Due to the unique circumstances of Bell’s case, his answers on the record during the waiver colloquies cannot conclusively refute that his waivers were involuntary, and the trial court should have granted an evidentiary hearing on this claim.

Fla. R. Crim. P. 3.851(5)(A)(i) states that the trial court shall schedule an evidentiary hearing “on claims listed by the defendant as requiring a factual determination.” An evidentiary hearing must be held on an initial Rule 3.851 motion for postconviction relief whenever the movant makes a facially sufficient claim that requires a factual determination. *See Kocaker v. State*, 311 So. 3d 814, 821 (Fla. 2020) (citing *Barnes v. State*, 124 So. 3d 904, 911 (Fla. 2013)); *Hurst v. State*, 18 So. 3d 975, 997 (Fla. 2009); *Gonzalez v. State*, 990 So. 2d 1017, 1024 (Fla. 2008). “On an initial rule 3.851 motion, such as in the instant case, to the extent there is any question whether the

⁹ The trial court cites: *Jackson v. State*, 347 So. 3d 292, 302 (Fla. 2022); *Reynolds v. State*, 99 So. 3d 459,484 (Fla. 2012); *Johnson v. State*, 22 So. 3d 840,842-45 (Fla. 1st DCA 2009); *Cartwright v. State*, 112 So. 3d 582, 584-85 (Fla. 4th DCA 2013).

movant has made a facially sufficient claim requiring a factual determination, the court must presume that an evidentiary hearing is required.” *Hurst v. State*, 18 So. 3d 975, 997 (Fla. 2009) (citing *Booker v. State*, 969 So. 2d 186, 195 (Fla. 2007)).

Whether Bell was suffering abuse at FSP that could have rendered his waivers involuntary was an issue of material fact that could not be determined from the current record. An evidentiary hearing was necessary so that inmates Womack and Boatman could testify to the abuse, and the full recording of Bell’s October 9, 2019 interview with Investigator Williams could be entered into evidence. Since the record was not clear on whether the abuse occurred, an evidentiary hearing was therefore appropriate to create a more accurate record. *See Strozier v. Newsome*, 871 F. 2d 995, 1000 (11th Cir. 1989) (reversing district court’s finding that defendant’s counsel waiver was valid because the record regarding the waiver was ambiguous and remanding for an evidentiary hearing to establish a more accurate record of the voluntariness and intelligence of defendant’s waiver); *see also Farr v. State*, 124 So. 3d 766, 778–79 (Fla. 2012) (considering defendant’s claim that his guilty plea was rendered involuntary by

abuse and intimidation he experienced in jail after the lower court held an evidentiary hearing on the claim).

The trial court cites a litany of cases to find that Bell's claim that his waivers were involuntary is conclusively refuted on the record by his statements during his waiver colloquies that he was not threatened, forced, or coerced. PC1562-63; *see supra* at footnotes 8 and 9. These cases cannot and should not be construed to prevent Bell from challenging his waivers.

Importantly, none of the cases the trial court cites concern a defendant challenging his involuntary waiver of counsel or a jury. The cases either relate to the defendant attempting to withdraw their plea by alleging it was involuntary due to ineffective assistance of counsel or otherwise invalid¹⁰ or claiming that their counsel was ineffective for misadvising them on whether to testify.¹¹ It is well-established that a defendant is bound by their answers during a ***plea colloquy*** and so

¹⁰ *See Smith*, 21 So. 3d at 73; *Iacono*, 930 So. 2d at 830; *Rodriguez*, 223 So. 3d 1096 at Fla. 3d DCA 2017; *Henry*, 920 So. 2d at 1246; *Alfred*, 71 So. 3d at 139; *Johnson*, 22 So. 3d at 843-45; *Cartwright*, 112 So. 3d at 583-84.

¹¹ *See McClenney*, 351 So. 3d at 650-51; *Jackson*, 347 So. 3d at 302; *Reynolds*, 99 So. 3d at 482-85;

therefore a sufficient colloquy will likely prevent them from withdrawing their guilty plea.¹² However, Bell is not attempting to withdraw his plea or challenge his conviction at all, and this legal doctrine should not be construed to imply that Bell's answers during his ***waiver of counsel colloquy and waiver of jury colloquy*** prevent him from challenging the involuntary nature of his waivers.

Further, even assuming arguendo that Bell is absolutely bound by his sworn statements during the waiver colloquies, this would not change the fact that Bell could not safely discuss the abuse in open court during the colloquies. Bell should not be penalized and his fundamental right to counsel and a jury forever forfeited because he remained silent to protect his physical safety. The only constitutional remedy to this uniquely unconstitutional situation is to either grant Bell an evidentiary hearing where evidence of the abuse can be entered

¹² “It is well-settled that when a court determines whether an allegation is conclusively refuted by the record, it may rely on the sworn testimony the defendant has given in a ***plea*** colloquy ... As long as the defendant's sworn testimony at the ***plea*** colloquy is specific enough to refute the allegations made in a post-plea motion, it may form the basis for a determination that the allegation is conclusively refuted by the record.” *Smith v. State*, 21 So. 3d at 76 (Fla. 1st DCA 2009) (emphasis added).

to accurately determine if his waivers were involuntary or grant Bell a new penalty phase trial all together based on the evidence of abuse currently before this Court in the record on appeal. *See Ventura*, 2 So. 3d at 197-98 (internal citation omitted) (“In reviewing a trial court's summary denial of postconviction relief, we must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record.”).

The trial court also states that “accepting as true [Bell’s] allegations that he was subjected to abuse from prison staff, his allegations are legally insufficient [to] establish his waivers were involuntary” since “he does not allege prison staff abused him to force or coerce him to waive.” PC1563. The trial court concludes that “[a]llegations of prison abuse, standing alone, do not establish [Bell’s] waivers were involuntary.” PC1563 (internal citations omitted). The trial court points to no authority holding that a defendant’s waiver of counsel or jury should be subject to such a stringent requirement. Further, this Court’s opinion in *Figueroa-Sanabria* implies that a defendant need not prove that the state action that caused an involuntary waiver of counsel was done specifically for the purpose of causing that waiver.

In *Figueroa-Sanabria*, the trial court made incorrect statements to the defendant concerning his right to counsel at the penalty phase, “effectively telling Figueroa-Sanabria that his right to the assistance of counsel was conditioned on the presentation of mitigation. Faced with this choice, one he should not have been forced to make, Figueroa-Sanabria decided to proceed pro se.” *Figueroa-Sanabria*, 366 So. 3d at 1054.

This Court concluded that Figueroa-Sanabria’s waiver of counsel was not knowing, intelligent, and voluntary, finding that “it was unconstitutional for the trial court to misinform Figueroa-Sanabria as to the nature of his rights and put him to the specific choice he faced: have a lawyer present mitigation, or go it alone.” *Id.* at 1054-55. This Court’s opinion does not state or appear to imply that Figueroa-Sanabria was required to prove that the trial court intentionally misinformed him for the purpose of causing him to waive his counsel in order to prove that his waiver was involuntary based on that misinformation. It was sufficient that the trial court’s misstatements essentially forced Figueroa-Sanabria to make a choice that forfeited his right to counsel. Bell was placed in the same

position by the abuse at FSP- he was forced to make a decision that forfeited his constitutional rights.

This Court should indulge in every reasonable presumption against Bell's waiver of his fundamental right to counsel. See *Figueroa-Sanabria*, 366 So. 3d at 1054; *Traylor v. State*, 596 So. 2d 957, 968 (Fla. 1992) (citing *Brewer v. Williams*, 430 U.S. 387 (1977) ("Any waiver of this right must be knowing, intelligent, and voluntary, and courts generally will indulge every reasonable presumption against waiver of this fundamental right.")).

Finally, the trial court finds that Bell's "claim that his alleged involuntary waiver of penalty-phase counsel deprived him of his right to an individualized sentencing determination, because it waived mitigation counsel would have presented" is procedurally barred because "[a] variation of this claim was raised and rejected on direct appeal." PC1563 (internal citations omitted). It should be noted that the argument as to individualized sentencing under Claim One of Bell's Motion is not raised as a stand-alone claim for relief, but as an intertwined argument highlighting the far-reaching effect that the FSP abuse had on Bell's constitutional rights. The deprivation of his

right to counsel caused by the abuse directly led to the deprivation of his right to an individualized mitigation presentation by counsel.

While a claim referencing Bell's right to an individualized sentencing determination was raised on direct appeal, it is distinct enough from the argument in Bell's current appeal that it should not foreclose consideration of the argument now. Bell's appellate counsel argued that "given the minimal mitigation presented at his consolidated hearing, the trial court erred in failing to employ the mitigation-investigation procedures this Court established in *Muhammad* and modified in *Marquardt*, thereby depriving him of an "individualized" sentencing determination." *Bell*, 336 So. 3d at 216. Appellant counsel's argument was that the trial court "neither requested that the State add to the record whatever background information was in its possession nor took steps to learn more about two potentially mitigating issues ... This did not allow for the individualized sentencing determination required by both federal and state precedent." See Initial Brief of Appellant in FSC Case No.: SC20-472 at 36-37. Appellant counsel's claim did not argue that Bell was denied an individualized sentencing due to the fundamental error of complete deprivation of counsel caused by prison abuse, but instead

argued that the trial court should have inquired further into potential mitigation. Bell does not argue that the trial court should have somehow discovered mitigation that was outside of the evidence then before the court.

The trial court erred in summarily denying relief on Claim One of Bell's Motion. Relief is proper.

ARGUMENT II

THE TRIAL COURT ERRED IN SUMMARILY DENYING BELL'S CLAIM THAT HE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE OF HIS CAPITAL TRIAL, IN VIOLATION OF THE SIXTH AMENDMENT AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. TRIAL COUNSEL WAS INEFFECTIVE UNDER *STRICKLAND V. WASHINGTON*, 466 U.S. 668 (1984) FOR FAILING TO ADEQUATELY INVESTIGATE EVIDENCE THAT BELL WAS BEING ABUSED BY FLORIDA STATE PRISON STAFF, WHICH INDICATED THAT BELL'S WAIVERS WERE NOT VOLUNTARY.

Bell's trial counsel was ineffective for failing to investigate the available evidence that Bell was being abused at FSP and for failing to inform the trial court of the effect that the abuse would have on the voluntariness of Bell's waivers of counsel and a jury. Trial counsel was ineffective for failing to review Bell's recorded October 9, 2019 interview with Investigator Williams, where Bell indicated he was being abused. Trial counsel was also ineffective for failing to locate and interview

Mitchell Womack and Leo Boatman, inmates who were housed with Bell on the “Q-wing” of FSP and who corroborated the abuse. Bell was prejudiced by trial counsel’s failure to conduct an adequate investigation into the abuse because there is a reasonable probability that Bell would not have waived his counsel and jury if trial counsel had conducted an adequate investigation and subsequently informed the trial court of the abuse.

Bell was further prejudiced because he was deprived of his right to an individualized sentencing determination by his involuntary waiver of counsel, and there is a reasonable probability Bell would have received a life-sentence instead of death if he had not been forced to waive his counsel. The trial court erred in summarily denying Claim Two without an evidentiary hearing. Bell did not receive effective assistance of counsel, and this Court should grant a new penalty phase trial to remedy this constitutional error.¹³

¹³ The trial court’s findings on Claim Two in the July 18, 2024 denial order are not organized in the same manner as Bell’s Motion. To avoid confusion, this brief will first present Claim Two and its subclaims to this Court, and then address the trial court’s findings as to Claim Two in a subsequent section.

A. The trial court erred in summarily denying Bell’s claim that trial counsel rendered prejudicial ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984) for not reviewing the audiotaped interview of Bell conducted by Investigator J.T. Williams on October 9, 2019 and apprising the trial court about the abuse Bell was experiencing at Florida State Prison.

Bell has a constitutional right to counsel under the federal Sixth Amendment as applied to the states through the Fourteenth Amendment, which includes the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Trial counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Wiggins v. Smith*, 539 U.S. 510, 521 (2003). Courts “must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.” *Id.* at 527. Bell’s trial counsel was ineffective for failing to adequately investigate and apprise the trial court of the available evidence that Bell was being abused by correctional officers at FSP. Bell was prejudiced because trial counsel’s failure to investigate the abuse resulted in Bell waiving his counsel and penalty phase jury and also resulted in Bell being deprived of the

individualized sentencing that he was entitled to. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also* Fla. Stat. § 921.141(3); *Lockett v. Ohio*, 438 U.S. 586 (1978). Bell must prove that counsel's performance was deficient and also "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Weaver v. Massachusetts*, 582 U.S. 286, 300 (2017) (quoting *Strickland*, 466 U.S. at 694.). Bell can also prove prejudice if he can establish that the "attorney errors rendered the trial fundamentally unfair." *Weaver*, 582 U.S. at 300.

Bell's trial counsel never reviewed details in discovery about the abuse that prompted Bell's incomprehensible waivers, although corroborating evidence was readily available to review and investigate. Bell's trial counsel had access to Bell's discovery materials but failed to review Bell's October 9, 2019 audiotaped interview with J.T. Williams, an investigator for the Lafayette County State Attorney's Office. Even though trial counsel was working under an expedited timeframe, an effective attorney would have reviewed the statements made by their own client to the State Attorney's Office. At the conclusion of arraignment, trial counsel had a clear understanding that he would be representing Bell for a period of time until, and unless, Bell formally

waived his right to counsel. Bell appeared at his first appearance proceeding on December 5, 2019, where Robert Baker III of Regional Criminal Conflict Counsel was appointed to represent Bell. R643-44. The record is clear that Attorney Baker was Bell's counsel at the conclusion of the December 5, 2019 hearing. Days later, while still being represented by Attorney Baker, Bell obtained a list of the State's discovery exhibits on December 11, 2019, of which Baker was also served. R38-52.

If trial counsel had reviewed the discovery list, he would have seen Bell's interview with Investigator Williams identified as "11 G. VIDEOS: DVD INITIALED BY JESSE BELL DURING INTERVIEW WITH JT WILLIAMS." R45. Bell told Investigator Williams about the abuses he experienced at Mayo CI and FSP. (Hear Exhibit 20 at 38:45-39:42). Trial counsel was ineffective for not reviewing the audio recording of the interview Investigator Williams did with Bell, nor taking notes to follow up and find out specifically what Bell was referencing regarding the abuse. Reviewing this evidence was crucial and not time-consuming. By not reviewing Bell's interview with the State's investigator, trial counsel's conduct "fell below an objective standard of reasonableness" and failed to meet "prevailing professional norms." *Strickland*, 466 U.S.

at 688; *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). Bell next appeared in court on December 13, 2019, where he waived his right to counsel and a jury. R151, 180. Between December 5, 2019 and December 13, 2019, Bell's Sixth Amendment right to counsel was established through the services of the regional conflict counsel. During that time, trial counsel was legally and ethically tasked with protecting Bell's constitutional rights.

Had trial counsel reviewed Exhibit 20, he would have been aware that Bell was abused at FSP, and that the voluntariness of his waivers should be called into question. Being a vulnerable inmate, Bell was not able to reveal the abuse to the trial court to protect himself. FSP staff attended every one of Bell's court dates, and Bell believed talking about the abuse would have put himself at peril if he explained in open court what was happening to him at FSP. However, if trial counsel had been aware of the abuse, he could have discreetly apprised the trial court and opposing counsel that Bell was in a violent, coercive environment that would call into question the voluntariness of his waivers. Bell waived his counsel and jury to speed up his penalty phase proceedings and hasten his expected death sentence so that he could escape the abuse at FSP by being transferred to death row at Union Correctional

Institution as quickly as possible. Bell did not want to waive his counsel and jury, but was forced to. Bell's waivers were involuntary. Bell was prejudiced by trial counsel's failure to uncover and inform the trial court about the abuse at FSP. There is a reasonable probability that Bell would not have waived counsel or a penalty phase jury, had trial counsel reviewed the interview with Investigator Williams and informed the trial court about the abuse Bell was experiencing at FSP. Bell was prejudiced because counsel's error effectively deprived Bell of his constitutional rights to counsel and a jury.

Bell was particularly prejudiced by the deprivation of his right to counsel, as he did not receive the individualized sentencing required in capital cases because he did not have the benefit of an individualized mitigation presentation prepared and presented by appointed counsel. Bell had a right to an individualized sentencing determination considering the unique circumstances of his life and background as potential mitigation. See Fla. Stat. § 921.141(3) (the sentencing court will consider all mitigating circumstances); see also *Lockett v. Ohio*, 438 U.S. 586, 606 (1978) (holding that the federal Eighth and Fourteenth Amendments require an individualized consideration of mitigating factors when determining the sentence in capital cases); *Proffitt v.*

Florida, 428 U.S. 242, 251-53 (1976) (finding that Florida's capital statutory sentencing procedures, which require the judge to consider each defendant's specific mitigation factors and individual circumstances, were not unconstitutional). Bell could not receive an individualized sentencing at his penalty phase because he was forced to waive his counsel, thereby waiving any mitigation presentation that his counsel would have done. The trial court was not apprised of compelling mitigation that weighs against Bell's death sentence because Bell was forced to waive counsel's investigation and presentation of that mitigation, and Bell certainly could not investigate and present the same quality and amount of mitigation from his cell at FSP. Had Bell not been forced to waive his counsel and therefore forfeit a complete mitigation presentation by his counsel, there is a reasonable probability that Bell would have received a life sentence instead of death.

The trial court erred in summarily denying relief on this claim.
PC1564-68.

B. The trial court erred in summarily denying Bell’s claim that trial counsel rendered prejudicial ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984) for not finding and interviewing Mitchell Womack at FSP, to corroborate the abuse Bell was suffering at FSP.

Bell has a constitutional right to counsel under the federal Sixth Amendment as applied to the states through the Fourteenth Amendment, which includes the right to effective assistance of counsel. *Strickland*, 466 at 684-86; *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Trial counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Wiggins*, 539 U.S. at 521 (2003). Courts “must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.” *Id.* at 527. Bell’s trial counsel was ineffective for failing to adequately investigate and apprise the trial court of the available evidence that Bell was being abused by correctional officers at FSP. Bell was prejudiced because trial counsel’s failure to investigate the abuse resulted in Bell waiving his counsel and penalty phase jury and also resulted in Bell being deprived of the individualized sentencing

that he was entitled to. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also* Fla. Stat. § 921.141(3); *Lockett v. Ohio*, 438 U.S. 586 (1978).

In order to prove prejudicial ineffective assistance of counsel, Bell must prove that counsel's performance was deficient and also "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Weaver*, 582 U.S. at 300 (quoting *Strickland*, 466 U.S. at 694.). Bell can also prove prejudice if he can establish that the "attorney errors rendered the trial fundamentally unfair." *Weaver*, 582 U.S. at 300.

If trial counsel had reviewed Exhibit 20, he would have also known that the abuse at FSP could have potential corroborating witnesses among Bell's fellow inmates in Q-wing at FSP. Trial counsel was also ineffective under *Strickland* for failing to locate and interview inmate Mitchell Womack, who would have been able to corroborate the abuse that Bell was experiencing at FSP. *See* PC935-37; *supra* at pp. 7-8. After reviewing Exhibit 20 and clarifying details with Bell, CCRC-M filed a Demand for Additional Records pursuant to Fla. R. Crim P. 3.852 (g)(3)(C) requesting that FDOC provide a list of inmates housed at FSP during the relevant time while Bell was abused there. The trial

court granted the Demand on June 2, 2023. FDOC's compliance in providing the list of inmate names at Q-wing lead to an interview with Womack, which corroborated the abuse that Bell was experiencing at FSP. Womack was housed at FSP and able to be interviewed by trial counsel at the trial level and was available and willing to testify at an evidentiary hearing in post-conviction.

There is a reasonable probability that Bell would not have waived counsel or a penalty phase jury, had trial counsel interviewed Womack and notified the trial court about the abuse Bell was experiencing at FSP. Bell waived his counsel and jury to speed up his penalty phase proceedings and hasten his expected death sentence so that he could escape the abuse at FSP by being transferred to death row at Union Correctional Institution as quickly as possible. Bell did not want to waive his counsel and jury, but was forced to. Bell's waivers were involuntary. Bell was prejudiced because counsel's error effectively deprived Bell of his constitutional rights to counsel and a jury.

Bell was particularly prejudiced by the deprivation of his right to counsel, as he did not receive the individualized sentencing required in capital cases because he did not have the benefit of an individualized mitigation presentation prepared and presented by appointed counsel.

Bell had a right to an individualized sentencing determination considering the unique circumstances of his life and background as potential mitigation. See Fla. Stat. § 921.141(3); *Lockett*, 438 U.S. at 606; *Proffitt*, 428 U.S. at 251-53. Bell could not receive an individualized sentencing at his penalty phase because he was forced to waive his counsel, thereby waiving any mitigation presentation that his counsel would have done. The trial court was not apprised of compelling mitigation that weighs against Bell's death sentence because Bell was forced to waive counsel's investigation and presentation of that mitigation, and Bell certainly could not investigate and present the same quality and amount of mitigation from his cell at FSP. Had Bell not been forced to waive his counsel and therefore forfeit a complete mitigation presentation by his counsel, there is a reasonable probability that Bell would have received a life sentence instead of death.

The trial court erred in summarily denying relief on this claim.
PC1564-68.

C. The trial court erred in summarily denying relief on Bell’s claim that trial counsel rendered prejudicial ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984) for not finding and interviewing Leo Boatman at FSP, to corroborate the abuse Bell was suffering at FSP.

Bell has a constitutional right to counsel under the federal Sixth Amendment as applied to the states through the Fourteenth Amendment, which includes the right to effective assistance of counsel. *Strickland*, 466 at 684-86; *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Trial counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Wiggins*, 539 U.S. at 521. This Court must consider whether the “known evidence would lead a reasonable attorney to investigate further.” *Id.* at 527. Bell’s trial counsel was ineffective for failing to adequately investigate and apprise the trial court of the available evidence that Bell was being abused at FSP. Bell was prejudiced because trial counsel’s failure to investigate the abuse resulted in Bell’s involuntary waivers and also resulted in Bell being deprived of the individualized sentencing that he was entitled to. See *Strickland v. Washington*, 466 U.S. 668 (1984); see also Fla. Stat. § 921.141(3); *Lockett v. Ohio*, 438 U.S. 586 (1978).

If trial counsel had reviewed Exhibit 20, he would have also known that the abuse at FSP could have potential corroborating witnesses among Bell's fellow inmates in Q-wing at FSP. Trial counsel was ineffective under *Strickland* for failing to locate and interview inmate Leo Boatman. Boatman's name was listed with Womack on the same list of Q-wing inmates provided by FDOC to CCRC-M in post-conviction. CCRC's subsequent interview with Boatman corroborated the abuse that Bell was experiencing at FSP. *See* PC939-42; *supra* at pp. 8-10. Boatman was housed at FSP and able to be interviewed by trial counsel at the trial level and was available to testify at an evidentiary hearing in post-conviction.

There is a reasonable probability that Bell would not have waived counsel or a jury, had trial counsel interviewed Boatman and notified the trial court about the abuse. Bell was prejudiced because counsel's error effectively deprived Bell of his constitutional rights to counsel and a jury. Bell was particularly prejudiced by the deprivation of his right to counsel, as he did not receive the individualized sentencing required in capital cases because he did not have the benefit of a mitigation presentation prepared and presented by appointed counsel. *See* Fla. Stat. § 921.141(3); *Lockett*, 438 U.S. at 606; *Proffitt v. Florida*, 428 U.S.

at 251-53. Had Bell not been forced to forfeit a complete mitigation presentation by his involuntary counsel waiver, there is a reasonable probability that he would have received a life sentence instead of death.

The trial court erred in summarily denying relief on this claim. PC1564-68.

D. The trial court erred in summarily denying Bell's claim that he was deprived of a constitutionally fair trial due to the cumulative errors made by trial counsel.

Bell has a constitutional right to counsel under the federal Sixth Amendment as applied to the states through the Fourteenth Amendment, which includes the right to effective assistance of counsel. *Strickland*, 466 at 684-86; *Gideon v. Wainwright*, 372 U.S. 335 (1963).

The number of errors in Bell's case, when considered as a whole, virtually dictated a sentence of death. Consequently, Bell did not receive the fundamentally fair trial to which he was entitled under the Sixth and Fourteenth Amendments. *See Morris v. Sec'y, Dept. of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012) (the cumulative error doctrine provides that an aggregation of individual non-reversible errors can yield a denial of the constitutional right to a fair trial, which calls for reversal); *see also Derden v. McNeel*, 938 F.2d 605,

610 (5th Cir. 1991) (“Several errors taken together can also violate a petitioner's right to due process and cause the trial to be fundamentally unfair.”). The proceeding subsections (A), (B), and (C) of Argument II of this brief articulate allegations of ineffective assistance of counsel that, when assessed as a whole, doubtlessly contributed to the sentence of death rendered by the trial court. See *State v. Gunsby*, 670 So. 2d 920, 924 (Fla. 1996) (holding that prejudice was found when considering “the cumulative effect of the testimony presented at the rule 3.850 hearing and the admitted *Brady* violations on the part of the State”). This Court “has recognized under unique circumstances that where multiple errors are found, even if they are individually harmless, the cumulative effect of such errors can deprive a defendant of the fair and impartial trial that is the inalienable right of all litigants.” *State v. Dougan*, 202 So. 3d 363, 389 (Fla. 2016) (internal citations omitted).

Trial counsel was deficient for failing to review Bell’s statement to Investigator Williams indicating the abuse and for failing to investigate further. There is a reasonable probability that Bell would have received a life sentence if trial counsel had not failed to investigate and inform the trial court about how the abuse could affect the voluntariness of

Bell's waivers. Trial counsel was further ineffective for failing to interview inmates Mitchell Womack and Leo Boatman, who would have corroborated the abuse Bell suffered at FSP. There is a reasonable probability that Bell would not have waived counsel or a penalty phase jury, had trial counsel corroborated the abuse and informed the trial court about the involuntariness of Bell's waivers. There is also a reasonable probability that Bell would have received a life sentence instead of death.

The trial court erred when denying relief on this claim. PC1564-68.

The Trial Court's Findings

The trial court finds that "[e]ach subclaim asserting that trial counsel was ineffective for not investigating available evidence that the Defendant was being abused by prison staff ... is procedurally barred, because they challenge counsel's alleged deficiencies prior to entry of the Defendant's no contest plea without an assertion that the plea itself is invalid." PC1565. The trial court reasons that Bell cannot challenge his counsel's pre-plea behavior because "[i]t is well established that

"[t]he plea cuts off inquiry into all that precedes it."¹⁴ Bell's no contest plea does not cut off inquiry into events that happened prior to his plea in the context of Bell's current litigation, because Bell is challenging those pre-plea events as they relate to his penalty phase and death sentence. Bell is specifically challenging his counsel's actions prior to entry of his no contest plea in the context of how those actions affected his waiver of counsel, his penalty phase, and his subsequent death sentence. Bell is not challenging his no contest plea or any aspect of his conviction.

None of the cases the trial court cites support the proposition that a capital defendant's plea cuts off inquiry into pre-plea events as those events relate to the defendant's penalty phase and death sentence. To hold this to be the case calls for an absurd result wherein every capital defendant who enters a plea but then proceeds to a full penalty phase will be foreclosed from challenging any decisions or actions that trial counsel made prior to entry of the plea, even if those

¹⁴ Citing *Stano v. State*, 520 So. 2d 278, 280 (Fla. 1988); *Baker v. State*, 879 So. 2d 663, 664 (Fla. 5th DCA 2004); *Bodden v State*, 766 So. 2d 416, 417 (Fla 4th DCA 2000); *United States v. Williams*, 29 F.4th 1306, 1313 (11th Cir. 2022); *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *Stano v. Dugger*, 921 F.2d 1125, 1150 (11th Cir. 1991).

events specifically relate to the penalty phase. Attorneys representing capital defendants often begin their investigations into potential mitigation many months, or even years, before a conviction is reached. The trial court's cited cases cannot be construed to imply that capital defendants who enter a plea somehow forfeit raising a claim related to counsel's decisions that may have happened prior to that plea, as those decisions relate to the defendant's **death sentence**.

The trial court's cited cases instead stand for the proposition that the entry of a guilty plea limits inquiry into pre-plea events, as those events relate to challenging the defendant's **conviction** that the plea resulted in. "When a defendant enters an unconditional guilty plea, he may raise on appeal only a narrow class of challenges to his **conviction**. He may challenge his **conviction** by asserting that his plea was involuntary." *United States v. Williams*, 29 F. 4th 1306, 1313 (11th Cir. 2022) (internal citation omitted) (emphasis added). None of the opinions the trial court cites hold or even imply that a no contest plea cuts off inquiry into pre-plea events as those events relate to a capital defendant's penalty phase or death sentence.¹⁵

¹⁵ It should also be noted that none of the cited opinions hold or even imply that a capital defendant must challenge the validity or

The trial court also finds that “[e]ven if the subclaims that counsel was ineffective for not investigating available evidence that the Defendant was being abused, rendering his waivers of counsel and a penalty-phase jury involuntary, were not procedurally barred, they are conclusively refuted by the record, which, as discussed in Claim 1, establishes each of the Defendant's waivers was voluntary.” PC1565. As previously argued, Bell’s claims that his waivers of counsel and a jury were involuntary are not conclusively refuted by the record because the FSP abuse is not apparent on the face of the record and Bell’s answers during his waiver colloquies do not conclusively refute the abuse. The trial court should have granted an evidentiary hearing so that the complete evidence of the FSP abuse Bell suffered could be entered into the record. *See supra* at pp. 48-52.

The trial court also should have granted an evidentiary hearing on Bell’s ineffective assistance of counsel claims because counsel’s trial strategy concerning the FSP abuse is not apparent on the face of the record. The record provides no answer as to why trial counsel did not raise the abuse with the trial court, or if trial counsel even knew about

voluntariness of his no contest plea in order to raise post-conviction claims challenging his death sentence.

the abuse in the first place.

An evidentiary hearing on ineffective assistance of counsel claims is generally needed to make factual determinations concerning trial strategy, and the trial court erred in denying an evidentiary hearing to determine what trial counsel's strategy concerning the abuse was in Bell's case. See *Gordon v. State*, 608 So. 2d 925, 925–26 (Fla. 3d DCA 1992) (internal citations omitted) (“[W]hen the trial court is confronted with the claim of ineffective assistance of counsel, a finding that some action or inaction by defense counsel was tactical is generally inappropriate, without an evidentiary hearing.”); *Dauer v. State*, 570 So. 2d 314 (Fla. 2d DCA 1990) (“The determination of whether or not defense counsel's actions were tactical is a conclusion best made by the trial judge following an evidentiary hearing.”).¹⁶

¹⁶ See also *Romero v. State*, 48 So. 3d 971, 972 (Fla. 3d DCA 2010) (internal citation omitted) (finding that trial court erred when finding that trial counsel's failure to request an abandonment instruction during defendant's trial for aggravated assault was a strategic decision without first holding an evidentiary hearing and explaining that “[a] trial court cannot deny a motion for post-conviction relief by finding that defense counsel's decision was tactical or trial strategy without first holding an evidentiary hearing.”); *Osborne v. State*, 912 So. 2d 58, 59 (Fla. 4th DCA 2005) (internal citations omitted) (“To the extent the State has argued that defense counsel's decision not to call [potential defense witnesses] was strategic or tactical, that would call for an evidentiary hearing); *Johnson v. State*, 840 So. 2d 369, 370

The trial court further finds that even if Bell's "claims of ineffective assistance of counsel were not refuted by the record, he cannot show deficient performance by guilt-phase counsel or standby counsel because he acknowledges" that "the basis upon which he asserts the waivers were involuntary is "unique." PC1566. The trial court further states that "the failure to present a novel legal argument not established as meritorious in the jurisdiction of the court to whom one is arguing is simply not ineffectiveness of legal counsel." PC1566 (internal citations omitted). The issue of a capital defendant claiming that his waiver of counsel and a jury are involuntary due to prison abuse may in fact be one of first impression. However, the principle

(Fla. 1st DCA 2003) (internal citation omitted) (explaining that the possibility that counsel's failure to object to prosecutorial comment "might have been a matter of trial strategy cannot be explored on this record without an evidentiary hearing"); *Hall v. State*, 754 So. 2d 70 (Fla. 4th DCA 2000) (explaining that counsel's trial strategy decision regarding whether to depose and call an expert witness could not be determined without an evidentiary hearing); *Evans v. State*, 737 So. 2d 1167, 1168 (Fla. 2d DCA 1999) (internal citation omitted) ("A trial court's finding that defense action or inaction is the result of trial strategy will generally be disapproved if the decision is made without the benefit of an evidentiary hearing."); *Guisasola v. State*, 667 So. 2d 248, 249 (Fla. 1st DCA 1995) (internal citations omitted) ("However, a trial court's finding that some action or inaction by defense counsel was tactical is generally inappropriate without an evidentiary hearing.").

that a defendant must waive his constitutional rights voluntarily was well established by the time Bell's waivers took place in 2019, and trial counsel would not have been raising a meritless issue if he had informed the trial court that there could be issues with the voluntariness of Bell's waivers.

Finally, the trial court finds that Bell's "claim that his alleged involuntary waiver of penalty-phase counsel deprived him of his right to an individualized sentencing determination, because it waived mitigation counsel would have presented" is procedurally barred because "[a] variation of this claim was raised and rejected on direct appeal." PC1567 (internal citations omitted). It should be noted that the argument as to individualized sentencing under Claim Two of Bell's Motion is not raised as a stand-alone claim for relief, but as an intertwined argument on the second prong of *Strickland*, explaining one of the ways that counsel's deficiencies prejudiced Bell.

While a claim referencing Bell's right to an individualized sentencing determination was raised on direct appeal, it is distinct enough from the argument in Bell's current appeal that it should not foreclose consideration of the argument now. Bell's appellate counsel argued that "given the minimal mitigation presented at his consolidated

hearing, the trial court erred in failing to employ the mitigation-investigation procedures this Court established in *Muhammad* and modified in *Marquardt*, thereby depriving him of an “individualized” sentencing determination.” *Bell*, 336 So. 3d at 216. Appellant counsel’s argument was that the trial court “neither requested that the State add to the record whatever background information was in its possession nor took steps to learn more about two potentially mitigating issues ... This did not allow for the individualized sentencing determination required by both federal and state precedent.” See Initial Brief of Appellant in FSC Case No.: SC20-472 at 36-37. Appellant counsel’s claim did not argue that Bell was denied an individualized sentencing due to counsel’s failure to apprise the trial court of prison abuse, but instead argued that the trial court should have inquired further into potential mitigation. Bell does not argue that the trial court should have somehow discovered mitigation that was outside of the evidence then before the court.

The trial court erred in summarily denying relief on Claim Two of Bell’s Motion. Relief is proper.

ARGUMENT III

THE TRIAL COURT ERRED IN SUMMARILY DENYING BELL'S CLAIM THAT THERE IS COMPELLING AND INDIVIDUALIZED MITIGATION THAT WEIGHS AGAINST BELL'S DEATH SENTENCE. FAILURE TO TAKE BELL'S UNIQUE MITIGATION INTO ACCOUNT IN CAPITAL SENTENCING WOULD VIOLATE BELL'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AND HIS RIGHT TO INDIVIDUALIZED SENTENCING UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Bell was entitled to an individualized sentencing as a capital defendant. There is significant and compelling mitigation that weighs against Bell's death sentence that the trial court did not have the benefit of considering for Bell's sentencing. CCRC-M has discovered seven broad categories of mitigation in post-conviction.¹⁷ There are

¹⁷ These categories were outlined and summarized in Bell's Motion as follows: (A.) The homicide of Donald Eastwood was committed while Bell was under the influence of extreme mental or emotional disturbance, pursuant to Fla. Stat. § 921.141(7)(b); (B.) Bell has Post-Traumatic Stress Disorder and Complex Post-Traumatic Stress Disorder; (C.) Bell suffered extreme childhood abuse and neglect, as evaluated by the Adverse Childhood Experiences Questionnaire; (D.) Research indicates that the childhood sexual abuse and mistreatment that Bell suffered could have affected his brain development and his overall development as he grew up; (E.) Bell suffered severe and persistent violence from other inmates after entering the Florida Department of Corrections; (F.) Bell experienced years of severe isolation due to being put in solitary confinement while incarcerated; (G.) Bell's family and friends love him, and they would suffer grievous harm if his death sentence were carried out. See PC899-913.

also four expert witnesses and at least three lay witnesses that were available to testify to evidence that: Bell was under the influence of extreme mental or emotional disturbance at the time of the homicide; Bell has a diagnosis of Post-traumatic Stress Disorder; Bell suffered severe childhood abuse and neglect; Bell experienced severe violence from other inmates while incarcerated with FDOC; and Bell has family and friends who love him and would be grievously injured if he were executed. him.¹⁸

Bell was entitled to an individualized sentencing determination considering the unique circumstances of his life and background as potential mitigation. See Fla. Stat. § 921.141(3) (the sentencing court will consider all mitigating circumstances); see also *Lockett v. Ohio*, 438 U.S. 586, 606 (1978) (holding that the federal Eighth and Fourteenth Amendments require an individualized consideration of mitigating factors when determining the sentence in capital cases); *Proffitt v. Florida*, 428 U.S. 242, 251-53 (1976) (finding that Florida's capital

¹⁸ The expert witnesses were Dr. James Campbell, Dr. Bryanna Fox, Dr. Kristopher Kaliebe, and Dr. Michael Quinones. The lay witnesses were Bell's son Anthony Jacobs, Anthony's mother Brandi Jacobs, and Bell's lifelong friend Troy Jennings.

statutory sentencing procedures, which require the judge to consider each defendant's specific mitigation factors and individual circumstances, were not unconstitutional). This claim for relief is raised under Bell's right to an individualized sentencing determination under the federal Eighth and Fourteenth Amendments.

The trial court finds that "this claim is procedurally barred because a variation of it was raised and rejected on direct appeal." PC1568 (internal citations omitted). Bell acknowledges that a similar claim was raised on direct appeal. Bell raises this claim now in post-conviction in an abundance of caution to preserve it for federal review. Further, there is a distinction between the current and appellate claim. Bell's appellate counsel argued that "the trial court erred in failing to employ the mitigation-investigation procedures this Court established in *Muhammad* and modified in *Marquardt*, thereby depriving him of an "individualized" sentencing determination." *Bell*, 336 So. 3d at 216. Appellant counsel's argument was that the trial court "neither requested that the State add to the record whatever background information was in its possession nor took steps to learn more about two potentially mitigating issues ... This did not allow for the individualized sentencing determination required by both federal and

state precedent.” See Initial Brief of Appellant in FSC Case No.: SC20-472 at 36-37. Appellant counsel’s claim did not argue that Bell was denied an individualized sentencing due to his involuntary waivers. Further, Bell does not argue that the trial court should have somehow discovered mitigation that was outside of the evidence then before the court.

The trial court also finds that this “claim is conclusively refuted by the record” because “mitigation evidence was introduced in the form of the Defendant's testimony, his competency evaluation, and a Presentence Investigation.” PC1568 (internal citation omitted). The minimal mitigation presented by Bell as a pro se defendant pales in comparison to the compelling, substantial mitigation that was available if Bell had counsel with the resources to investigate and present it. See *supra* at pp. 16-26. The brief references to childhood sexual abuse and diagnoses of Depression, Anxiety, and Antisocial Personality Disorder in the competency evaluation Bell entered at trial were only a “bare bones” reference to the far more complex history of Bell’s traumatic life experiences and included no explanation of Bell’s state of mind at the

time of the homicide. PC198-204.¹⁹ The trial court should have granted an evidentiary hearing to make a factual determination concerning the presence of the substantial additional mitigation discovered in post-conviction. *Kocaker*, 311 So. 3d at 821 (citing *Barnes*, 124 So. 3d at 911) (“An evidentiary hearing must be held on an initial 3.851 motion whenever the movant makes a facially sufficient claim that requires factual determination.”)

The trial court knew extraordinarily little about the unique mitigating circumstances that explain Bell’s participation in the homicide and Bell’s life-choices when rendering his sentence. “[E]vidence about the defendant’s background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse.”

¹⁹ *Cf. Parker v. State*, 3 So. 3d 974, 985 (Fla. 2009) (Trial counsel’s “bare bones” rendition of some evidence was not enough to establish mitigation where there was “a wealth of witnesses who were never interviewed and documents that were never sought that could have fleshed out and established the mitigating circumstances.”).

California v. Brown, 479 U.S. 538 (1987) (O'Connor, J., concurring).

The sentence imposed at the penalty stage should reflect a reasoned moral response to the defendant's background, character, and crime.

Id.

The USSC has made clear that the consideration of mitigation by the sentencer is at the heart of the constitutionality of the death penalty. In *Proffitt v. Florida*, 428 U.S. 242 (1976), the USSC considered whether the imposition of the sentence of death for the crime of murder under Florida law violated the Eighth and Fourteenth Amendments. *Id.* at 244. The USSC found that Florida's new death penalty law passed constitutional scrutiny because "the sentencing judge must focus on the individual circumstances of each homicide and each defendant. *Id.* at 252. Because the trial court was not given the benefit of hearing the substantial mitigation in Bell's case, the court could not fully consider the individual and unique circumstances of Bell's life and character. The deprivation, mental illness, and trauma that Bell suffered throughout his life was never heard, thus failing to meet the bare requirements of *Proffitt*.

The USSC moved forward and developed even more principles to ensure that the death penalty was not exacted on those who did

not meet the requirements of the Constitution. *Woodson v. North Carolina*, 428 U.S. 280 (1976), required that a death penalty scheme “allow the particularized consideration of relevant aspects of the character and record of each convicted defendant before the imposition upon him of a sentence of death.” *Id.* at 303. This did not occur in Bell’s case. Then came a litany of cases that required consideration of mitigation. In *Lockett v. Ohio*, 438 U.S. 586 (1978) the USSC “conclude[d] that the Eighth and Fourteenth Amendments require that the sentencer ... not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.” *Id.* at 604.

In *Eddings v. Oklahoma*, 455 U.S. 104 (1982) the USSC applied *Lockett*, stating that,

the rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus “on the characteristics of the person who committed the crime,” ... the rule in *Lockett* recognizes that “justice ... requires ... that there be taken into account the circumstances of the offense together with the character and propensities of the offender.” ... By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating

factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

Id. at 112 (internal citations omitted). A clear understanding of these cases demonstrates that the USSC has long recognized the need for an individualized sentencing that carefully considers all mitigation. Bell was denied this at the time of trial, due to his desperate involuntary waivers. As was fully detailed in Bell's Motion, there is substantial and compelling mitigation that weighs against Bell's death sentence that the trial court never heard. PC899-913.

The trial court erred in summarily denying Claim Three of Bell's Motion. Relief is proper.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing arguments, Bell respectfully requests that this Court: remand his case for an evidentiary hearing on all claims; vacate his sentence of death; and/or grant any other relief this Court deems appropriate.

Respectfully submitted,

/s/ Adrienne Joy Shepherd

Adrienne Joy Shepherd
Florida Bar No. 1000532
Assistant CCRC
Email: shepherd@ccmr.state.fl.us

/s/ Ali A. Shakoor

Ali A. Shakoor
Florida Bar No. 0669830
Assistant CCRC
Email: shakoor@ccmr.state.fl.us

The Law Office of the Capital Collateral
Regional Counsel- Middle Region
12973 Telecom Parkway North
Temple Terrace, Florida 33637
Tel: 813-558-1600
Fax: 813-558-1601
Second email: support@ccmr.state.fl.us

Counsel for Appellant

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Florida Supreme Court, and electronically delivered to Jason Rodriguez, Assistant Attorney General, at jason.rodriguez@myfloridalegal.com and capApp@myfloridalegal.com on this 28th day of October, 2024.

/s/ Adrienne Joy Shepherd
Adrienne Joy Shepherd
Florida Bar No. 1000532
Assistant CCRC
Email: shepherd@ccmr.state.fl.us

/s/ Ali A. Shakoor
Ali A. Shakoor
Florida Bar No. 0669830
Assistant CCRC
Email: shakoor@ccmr.state.fl.us

The Law Office of the Capital Collateral
Regional Counsel- Middle Region
12973 Telecom Parkway North
Temple Terrace, Florida 33637
Tel: 813-558-1600
Fax: 813-558-1601
Second email: support@ccmr.state.fl.us

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

We hereby certify that a true copy of the foregoing Initial Brief of the Appellant was generated in Bookman Old Style 14-point font. We also hereby certify that the Brief contains 19, 505 words of the 20,000 allowed by Fla. R. App. P. 9.210.

/s/ Adrienne Joy Shepherd
Adrienne Joy Shepherd
Florida Bar No. 1000532
Assistant CCRC
Email: shepherd@ccmr.state.fl.us

/s/ Ali A. Shakoor
Ali A. Shakoor
Florida Bar No. 0669830
Assistant CCRC
Email: shakoor@ccmr.state.fl.us

The Law Office of the Capital Collateral
Regional Counsel- Middle Region
12973 Telecom Parkway North
Temple Terrace, Florida 33637
Tel: 813-558-1600
Fax: 813-558-1601
Second email: support@ccmr.state.fl.us

Counsel for Appellant