IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-2025

LOUIS B. GASKIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE SEVENTH CIRCUIT COURT OF THE JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

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REPLY TO APPELLEE'S STATEMENT OF FACTS

While the Appellee generally accepts the statement of case and facts set forth in the Appellant's brief, the Appellee does choose to emphasize those parts of the facts which support its conclusion that the trial court was justified in denying the Appellant relief in the 3.850 hearing.

Specifically, the Appellee relies upon the testimony of the trial attorney Mr. Cass when he testifies that he had handled 150 to 175 cases in which the death penalty was a possibility. (PCR-5, 665) In the geographic area of the state of Florida that Mr. Cass practiced in it would be impossible for him to have participated in that many cases over the ten year period covered by his testimony. Moreover, the Appellee discusses what Mr. Cass represents as his case load of fourteen to sixteen capital cases again in Flagler county, Florida. A review of the record during the time of Mr. Gaskin's trial shows that there was at most two capital cases ongoing. The Appellee discusses a person by the name of Jacobson and describes that person as Co-Counsel. A review of the record of the entire trial of Mr. Gaskin shows no participation by a person by the name of Jacobson. Additionally, comments by the Appellee that because Mr. Jacobson had a Ph.D. in Psychology that he was useful in addressing the psychological issues in the case, is not borne

out in the record as there is no indication that Mr. Jacobson ever discussed the case with Dr. Krop, Dr. Davis or Dr. Rotstein. Moreover, there is no discussion anywhere in the case record where Mr. Jacobson discussed psychological problems with Mr. Cass or did he have contact with Mr. Gaskin to evaluate in any way the depth and seriousness of the psychological problems facing Mr. Gaskin.

The Appellee appears to criticize CCR for denying to Mr. Cass the trial file so that Mr. Cass could better prepare himself for the Evidentiary Hearing. (CCR-5, 675) The fact is that Mr. Cass never made any attempt to contact CCR to prepare himself for participating in the Evidentiary Hearing which was some evidence of his ineffectiveness as an attorney and his lack of caring, if you will, for Mr. Gaskin.

The Appellee characterizes that Mr. Cass "successfully had two experts appointed to assist the defense." This is a misleading statement in that Mr. Cass testified in the Evidentiary Hearing that he hired Dr. Davis only to keep the State from hiring him and did not expect Dr. Davis to provide him with any meaningful psychological information or testimony regards Mr. Gaskin. The Appellee further discusses in great length the interaction of Mr. Cass with Dr. Krop. While this issue, that is Mr. Cass' utilization of Dr. Krop as an expert,

will be discussed in greater length when argument is made in this Reply Brief, Appellant feels that it is worth noting that Mr. Cass had great problems remembering his actual interaction with Dr. Krop. Furthermore Mr. Cass did not remember or did not believe that he himself had ever received Mr. Gaskin's school records and therefore, obviously, did not pass those records along to Dr. Krop. Cass further testified at the Evidentiary Hearing that his taking a court reporter into the jail to discuss his decision, that is Mr. Cass' decision not to put on psychological evidence, was out of the ordinary and that he was "probably doing it to protect his profession reputation." There is no indication in the record that Mr. Cass ever truly discussed the options with Mr. Gaskin of presenting selected psychological testimony in his sentencing hearing as potential mitigation in this case.

While it may be true that, as the Appellee's recitation of the facts point out in Appellee's brief that Dr. Krop had informed Mr. Cass that his testimony might be harmful to Mr. Cass' case, it is undisputed that the information that Dr. Krop gathered in his evaluation of Mr. Gaskin could have been used by Mr. Cass to investigate through the use of other experts a number of issues that could have and should have been presented to the sentencing jury in this case. (AB-6). The Appellee

discusses a strategic determination not to use mental health testimony and this is a repetitive theme throughout Mr. Cass' cross-examination that all these decisions he made were strategic because of his fear of presenting psychological evidence which may or may not have opened the door to the State Attorney to introduce other information about Mr. Gaskin. (AB-6)

What a review of the facts shows in this case is that Mr. Cass was faced with a decision wherein the facts of this crime alone were quite horrendous. A trial attorney, in the position of Mr. Cass, had to make a determination, or a balancing, if you will, as to whether or not to draw for the jury a complete picture of Mr. Gaskin's mental health problems. Mr. Cass's decision was to present minimal testimony and evidence around the incident itself. It is maintained by the Appellant that this decision was per se ineffectiveness given the depth and breadth of information available to Mr. Cass had he conducted a complete investigation of the mental health and family history of Mr. Gaskin.

There is a graphic example of the difference between Mr. Cass' lack of memory when it came to answering the questions put to him by the post-conviction lawyers from the responses given to the Assistant Attorney General during his cross examination

of Mr. Cass. Mr. Cass on numerous occasions answered to certain question posed by the Appellee as to whether or not decisions to not put people on to not present evidence was a "strategic determination." (AB-8). In almost every instance Mr. Cass replied absolutely. The amount and type of information presented to the jury failed to present a true picture of Mr. Gaskin to the jury. (AB-8) In fact, the picture presented of Mr. Gaskin had no basis in fact or truth. The Appellee continues to discuss Cass's apparent decision not to show the jury that Gaskin had a criminal history from the time that he was very young until the time that he murdered the victims. (AB-9) The problem with this approach was that had Mr. Cass been open to looking at Mr. Gaskin's "criminal history from the time he was very young" he would have realized that it was this very criminal history that reflected the depth of Mr. Gaskin's mental health problems which should have been looked at by someone other than Dr. Krop or Dr. Davis.

The next section of the Appellee's factual recitation which runs from page 9 through and including page 26 is a discussion of the psychological testimony. This particular testimony will be addressed in more length in a section of this Reply Brief dealing with the actual issues presented to the court in the Appellant's Brief. The last section of the factual part of the

Appellee's brief, which begins on page 26 discusses the presentation at the post-conviction hearing of lay witnesses, including several persons connected with the school system who either knew Mr. Gaskin or were in the school system at the time Mr. Gaskin was going to school there. There is an attempt by the Appellee to minimize the importance of the lay witness testimony, but it is submitted to the court that a review of the lay witness testimony presented at the Evidentiary Hearing gives this court a window to look through to see what could have been presented and developed during the trial of Mr. Gaskin. Mr. Cass's failure to investigate Mr. Gaskin's life from his earliest days up to and including the time that these crimes were committed limited the presentation to the jury.

Any additional facts necessary for disposition of the issues raised in the Appellee's brief will be discussed in the argument, infra.

ARGUMENT I

THE TRIAL COURT ERRED IN DENYING LOUIS B. GASKIN'S CLAIM THAT COUNSEL WAS INEFFECTIVE AT THE SENTENCING PHASE OF HIS CAPITAL TRIAL, IN VIOLATION OF THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS. TRIAL COUNSEL WAS RENDERED INEFFECTIVE BY THE TRIAL COURT'S AND STATE'S ACTIONS.

Trial counsel's failure to adequately investigate and

prepare important mitigation evidence definitely prejudiced Mr. Gaskin to the extent that he received a death recommendation from the jury and was subsequently sentenced to death. In Strickland v. Washington, 466 U.S. 668 (1994), the United States Supreme Court held that counsel has "a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial process." Strickland requires a defendant to plead and demonstrate both unreasonable attorney performance and prejudice to prevail on an ineffective assistance of counsel claim, Id. Mr. Gaskin has fulfilled each requirement.

Both prongs of the Strickland test to determine whether counsel rendered ineffective assistance of counsel are mixed question of law and fact, which this court considers de novo. Stephens v. State, 748 So.2d. 1028, 1033-34 (Fla. 1999).

> Regarding the prejudice prong, this court held an ineffective assistance of counsel claim certs the absence of one of the crucial assurances that the result of the proceeding is reliable. So finality concerns are somewhat weaker and the appropriate standard of prejudice should be lower. The result of the proceeding can be rendered unreliable and, hence, the proceeding itself unfair, even if the errs of counsel cannot be shown by a prepoundance

> of the evidence to have determined the outcome.

Stephens, 748 So.2d. at 1033-34.

> Reasonable lawyers and law givers regularly disagree with one another. Congress surely did not intend that the views of one such judge who might think that relief is not warranted in a particular case should always have greater weight than the contrary, considered judgement of several other reasonable judges.

Williams v. Taylor, 529 U.S. 362, 376-78 (2000). The issue is whether the decision was reasonable, not whether a lawyer is reasonable.

B. The trial court erred in holding that counsel's failure to effectively investigate and present mitigation was not ineffective assistance of counsel.

1. Counsel's failure to investigate Louis Gaskin's family and background was ineffective assistance of counsel.

Appellee first asserts that the trial court's ruling denying post-conviction relief is supported by the record and should be affirmed on appeal. (AB-32).

Appellee states that "Appellant's counsel was not ineffective for failing to present mental health testimony and additional lay mitigation witness testimony." (AB-35) Appellee maintains in his summary of the argument that "counsel retained two mental health experts to examine the Appellant." (AB-32). This assertion from the very beginning of Appellee's brief is incorrect. Defense counsel testified at the Evidentiary Hearing

that while Dr. Krop was retained to examine the Appellant, Dr. Davis was in fact retained to prevent the State from hiring him to examine Mr. Gaskin. In fact, in reading the record as well as the Appellant briefs for the both the Appellant and the Appellee, Dr. Davis' name is never brought up or are there any references to any findings that he had reference Mr. Gaskin. So, in effect, in going through the ineffectiveness claim again Mr. Cass is that first issue of whether or not he made a "strategic decision" in retaining two mental health experts. He in effect gave up the hiring of two mental health experts when he hired Dr. Davis knowing that Dr. Davis would find Mr. Gaskin competent and sane and would be of little or know help in the actual trial of Mr. Gaskin. Additionally, Appellee states that "collateral counsel has not been able to uncover any significant mitigation that might have altered the jury's recommendation in this case given enormous compelling aggravators present in the double homicide case." (AB-32)

The Appellee maintains that Mr. Gaskin "attempts to take pieces from the mental health evaluations that might prove useful but ignores that vast, indeed overwhelming, negatives associated with the presentation of that testimony." (AB-37) What is striking about Appellee's argument throughout this brief is the conclusion reached both by the trial court and by the

Appellee that the defense counsel's strategy to not present additional mitigation evidence was based upon the fact that the jury would hear additional damaging information both from psychological witnesses and from lay witnesses about the life of Mr. Gaskin. It is agreed that the law of the state of Florida reserves the seeking of the death penalty to those crimes that are the most outrageous, heinous and atrocious. In this case, the very nature of the crimes committed by Mr. Gaskin were in and of themselves outrageous and heinous. The reliance by the Appellee on the "strategic decision" by Mr. Cass not to present additional evidence about Mr. Gaskin's life in effect left Mr. Cass presenting no evidence at all, upon which the jury could have looked at Mr. Gaskin's life in a total picture.

Appellee states on page 37 of his brief, "Trial counsel, unlike post-conviction counsel, does not operate in a vacuum. Whereas post-conviction counsel prefers to throw everything possible into the mix in hopes of finding some aspect of information critical enough to hit the target of ineffective assistance, a trial attorney must consider the totality of the potential mitigation, including the impact of evidence upon a jury and the potential rebuttal that might be offered." (AB-37) Appellee then goes on to state, "... and in this case, it is fortunate that the strategic nature of the decision not to offer

mental health testimony is protected in the record." (AB-37) This characterization of post-conviction counsel is, in this particular case, unrealistic and does not in any way comport with the trial experience of the attorney writing this reply brief. Trial counsel's responsibility in a capital case is to develop pre-trial the most extensive and comprehensive picture of the defendant. While this testimony and evidence may or may not be submitted to a jury, the responsibility of trial counsel is to look for, seek out and develop a total picture of a defendant, especially like Mr. Gaskin.

There was really no significant issue of guilt as to Mr. Gaskin in this case. Mr. Gaskin had confessed, and therefore the entire energies of Mr. Cass should have been placed on the penalty face. The attorney writing this brief reaches a conclusion which is not supported by any record but is basically a figment of the Appellee attorney's imagination in that he states that "given the horrible nature of the multiple murders and attempted murders, four victims in all, four votes for life represented a significant achievement." (AB-37) The problem with this argument, which is quite frankly repeated throughout the Appellee's brief, is that Mr. Gaskin sits on death row faced with the ultimate punishment that can be applied by the state of Florida regardless of whether the vote was 8-4, 7-5, 11-1 or 12-

0. The argument is completely disingenuous when it comes to attempting to justify the lack of preparation for this trial by Mr. Cass.

It is extremely interesting that the following conclusions by Appellee is followed up by the description in one paragraph of Mr. Cass' discussion with Mr. Gaskin of the testimony or potential testimony of Dr. Rotstein, a person hired by the State. In fact, Dr. Rotstein actually found one of the statutory mitigating factors to apply to Mr. Gaskin. This counsel was quite astonished to find that, in discussing this matter with Mr. Gaskin, Mr. Cass took a court reporter into the jail holding cell so as to make a record of his advice to Mr. Gaskin not to call Dr. Rotstein in the penalty phase. In attempting to justify his behavior in not calling Dr. Rotstein, he is asking Mr. Gaskin, a person who Dr. Krop testifies is one of the most seriously mentally ill individuals he has ever seen in this practice to make a judgement about whether or not Dr. Rotstein should be called as a witness. (AB-38) In the Evidentiary Hearing, Mr. Cass is hard pressed to explain why he took a court reporter in and made a memorialized record of this conversation except it has something to do with maintaining Mr. Cass' reputation. Appellee quotes the case of Majarage v. State, 778 So.2d. 844, 959 (Fla. 2000) to support a well known

factor in post conviction work and that is as a strategic decision counsel's performance is virtually unassailable in post-conviction litigation. In the Majarage case, this court held, "that it is recognized that counsel cannot be ineffective for strategic decisions made during a trial." Medina v. State, 573 So.2d. 293-297 (Fla. 1990).

Appellee then goes on to talk about certain characteristics ascribed to Mr. Gaskin. "Appellant expressed a lack of remorse for his murderous conduct, confessed to having murdered a co-worker for money and attempted to murder another woman, also for money. When he gunned down his co-worker, Appellant claimed Miller begged for his life saying, 'Don't shoot me, don't shoot me.'" (PCR-8, 1049). When asked if his cries for mercy bothered him, Appellant told Dr. Rotstein, "It didn't bother me. His begging for mercy didn't bother me." (PCR-8, 1049). The Appellee then goes on to describe other deviant acts that Mr. Gaskin admitted to during some of his psychological evaluation s with Dr. Krop. (AB-40-41) What Appellee misses in all of this information is that it is the very nature of Mr. Gaskin's long-term mental illness as evidenced by much of the information he gave to Dr. Krop as well as the continuing difficulty Mr. Gaskin had in school that were the true indicators of the depth and breadth of Mr. Gaskin's mental health problems. The

continued reliance upon the open-the-door theory to allow the prosecution to put the horrible details of each murder" again reduced Mr. Cass' presentation to the jury to two family witnesses. The reliance upon strategic decisions will only be affirmed by this court if the strategy itself is reflective of an intensive and in -depth analysis of those issues which are being precluded by the strategic decision. Eutzy v. State, 536 So. 2d 1014 (Fla. 1988). The difficulty and the ineffectiveness of Mr. Cass is apparent because Mr. Cass in fact did no investigation of any depth or any detail about Mr. Gaskin.

Appellee misses the major point of the Appellant's brief when he states the following, "Appellant's attack on the quality of the mental health systems available to him is without merit." (AB-42) The collateral counsel in this case was not attacking Dr. Krop's evaluation. What collateral counsel was stating in his brief was that Dr. Krop provided Mr. Cass with a wealth of information about the mental health problems associated with Mr. Gaskin. It was up to Mr. Cass to follow up on this information in developing a picture of Mr. Gaskin to be presented to the jury during the trial of this case. Mr. Cass did nothing beyond relying upon Dr. Krop's decision or conclusion, that he would hurt Mr. Gaskin if he testified. Again, in response to Appellee counsel arguing that Mr. Cass employed two mental health

experts, there is no mention in Appellee's brief and there is no mention anywhere else of any findings by Dr. Davis because, in effect, Mr. Cass threw away his opportunity to have two mental health experts by employing one which he knew would not be helpful to him. Additionally, it is extremely interesting that the State's expert, Dr. Rotstein, actually finds a mental health mitigator as to Mr. Gaskin. Even there, Mr. Cass first goes to great lengths to cover himself when he decides not to call Dr. Rotstein in the trial.

Once again, Appellee's counsel misstates the very focus of Appellant's brief when he relies upon Jones v. State, 732 So.2d. 313, 317-318 (Fla. 1999). "Finding no deficient performance for failing to procure Dr. Crown and Toomer noting that trial counsel is not ineffective nearly because post-conviction counsel is subsequently able to locate experts who are willing to say that the statutory mitigators do exist in the present case." (AB-43)

The Appellee's brief returns to the recurring theme of his argument in stating that "presenting Dr. Toomer's testimony would reveal another murder committed by the Appellant, co-worker of his at the mill, as well as another attempted murder of a woman during an ATM machine robbery." (AB-44) This is not applicable in the sense that the argument in the appellant's

brief is that Dr. Krop's information supplied to Mr. Cass should have been followed up upon by Mr. Cass. In not doing so, Mr. Cass was not in a position to make strategic decisions. Mr. Cass's failure to investigate led to making decisions that were not informed, thus rendering his counsel ineffective. Appellee then states that Appellant's reliance upon this court's decision in Rose v. State, 675 So.2d 567 (Fla. 1996) is misplaced. (AB-44) The situation in Rose was and is exactly as the situation in Mr. Gaskin given the fact that there is and was at the time additional mitigation evidence available to be found by Mr. Cass which was never found because Mr. Cass did no investigation into the Defendant's true mental health status.

Trial counsel is not relieved of his responsibility to look into additional factors simply by the retaining of two mental health experts. It appears from the Appellee's brief that once Mr. Cass had employed Dr. Davis and Dr. Krop that he had no further responsibility to do anything other than wait for the reports to come in from those two persons. In fact, that is exactly what Mr. Cass did. He waited for the reports to come in, he went and picked a jury and today Mr. Gaskin sits on death row because Mr. Cass's ineffectiveness.

On page 46 of the Appellee's brief, there is some discussion about the finding by the court of CCP. Appellant's counsel did

not argue that this case was not appropriate for the application of CCP and therefore Appellant's counsel is a little bit confused by this line of reasoning as contained in the brief. At the conclusion of the first argument, we are presented once again with the recurring theme of Appellee's brief, "Trial counsel made a reasonable investigation into Appellant's background, talked to family members, and hired two mental experts," (AB-48). This level of preparation for a case as serious as the one facing Mr. Gaskin is on its face ineffective and certainly prejudiced Mr. Gaskin to the extent that he received the death penalty for his crimes.

ARGUMENT II

APPELLANT PRESENTED THE FACT THAT TRIAL COUNSEL'S FAILURE TO PRESENT ADDITIONAL LAY WITNESSES IN MITIGATION WAS REFLECTIVE OF HIS INEFFECTIVENESS AS TRIAL COUNSEL.

Appellee quotes the court's order at some length as a justification for then going on and saying that the court was justified in denying the Appellant relief. (AB-48)

The difficulty with this presentation by Appellee's counsel is that lays out some of the problems that Mr. Gaskin was having in school. (AB-49). These very problems were indicators very early in Mr. Gaskin's life that he had significant mental health problems and could have and should have received some kind of

help as he developed from a boy into a man.

Appellee concludes that "on the whole the way mitigation testimony presented was hardly compelling.." (AB-50) Again, Appellee's counsel seems to want to place himself in the jury box in this case and decide what is compelling and what is not compelling. The facts remain that none of this evidence or very little of this evidence was ever presented to the jury and in terms of drawing a "complete picture" of what Mr. Gaskin really was like, what his life was like, its apparent that Appellee's counsel was downplaying this type of information. Its also apparent that the Appellee's counsel is somewhat unfamiliar with the facts because he continues to talk about Mr. Gaskin being raised by his grandparents when in fact he was raised by his great-grandparents. This is of some significance in the fact that there was tremendous age gap between the care takers of Mr. Gaskin and Mr. Gaskin. Their ability to help him to see problems for what they were and to seek help to assist them in dealing with Mr. Gaskin was significantly impaired by their age and by their lack of education.

Appellant's counsel has never argued that Mr. Gaskin did not have a life that was full of difficulties and in many ways full of crime. Appellee's counsel goes over this information in almost a way of shocking the court to again minimalize the

potential impact of what evidence could have been presented to show the jury the true Mr. Gaskin. What this argument fails to comprehend is that the crimes themselves in Mr. Gaskin's case, that is the double homicide and the double attempted homicide, are so heinous and atrocious, that when trial counsel made, if in fact he did make, a strategic decision not to present other testimony about Mr. Gaskin, he therefore mislead the jury as to what Mr. Gaskin was about. In presenting two family members who describe Mr. Gaskin as living a "normal life" this picture then the jury went back and had to say to themselves 'well, if he lived a normal life and had minimal problems' because that's all they knew given the very, very small amount of information that Mr. Cass presented to them, 'how does the commission of these horrible crimes or how can they be explained'. The only explanation that the jury is allowed to reach, given the minimal information they received, was that Mr. Gaskin is a sociopath, a person that in fact deserves to receive the death penalty. In fact, in closing argument, Mr. Gaskin's own attorney, Mr. Cass, calls him a sociopath. According to Appellee's counsel, Mr. Cass had worked so hard and made so many strategic decisions to not present psychological evidence so that they would not hear words like sociopath and antisocial personality disorder that in closing Mr. Cass himself relates these concepts to the jury.

In the Appellee's brief counsel writes, "The picture of the Appellant presented at trial was more favorable than the impression after the Evidentiary Hearing" (AB-52). This is the very point of Mr. Gaskin's ineffectiveness of assistance of counsel claim in his 3.850 as well as in his brief to this court. If the jury in this case was presented an unrealistically favorable impression of Mr. Gaskin, then how does this jury really have a basis in fact to evaluate what Mr. Gaskin did on the night of these crimes? The answer is the jury did not have an accurate picture of Mr. Gaskin and therefore was making a decision in a vacuum. The third argument raised in the Appellee's brief is failure to establish prejudice. (AB-53) Appellant would simply state that the fact that he is on death row and received a death sentence from the court is proof in and of itself that he was prejudiced by the ineffectiveness of Mr. Cass.

A. Counsels Alleged Failure to Provide Mental Health Experts With Sufficient Background Information.

The Appellee continues to rely very heavily on the court's order and stating that the trial court was justified in denying this claim. Appellant does maintain his position that had Mr. Cass done a thorough investigation of the life and times of Mr. Gaskin, that not only could have the mental health experts been given more information but that investigation itself would have

provided Mr. Cass more witnesses to call in the penalty phase of this trial. We don't know whether Dr. Davis ever requested additional information because there is no report from Dr. Davis. Again, from Mr. Cass' own testimony, the only reason he hired Dr. Davis was basically to keep him from being hired by the State of Florida.

"In this case, Mr. Cass successfully had two mental health experts appointed." (AB-58) Appellee seems to write as if that was some brilliant piece of work by Mr. Cass. Post-conviction counsel is at best mystified by this conclusion by the Appellee's counsel. Certainly, in a death penalty case the courts are quite willing to appoint experts to assist the defense in preparing for a trial. It is very common in the state of Florida to have one or more mental health experts appointed as well as additional investigators, mitigation specialists, etc. To characterize Mr. Cass as having done an effective job of representing Mr. Gaskin simply because he was able to get two mental health experts appointed is entirely disingenuous.

Appellee's counsel then concludes that they conducted comprehensive testing of the Appellant in light of reports and opinions to counsel based upon the testing and background information provided by family members. This conclusion again

is not supported by the facts in this case. We don't know anything about what Dr. Davis found or did not find. We certainly did not know whether he had any contacts or information from family members. We know that Dr. Krop was without certain information for a long time before this trial started and in fact never did receive the school records. Appellee's counsel appears to downplay the importance of school records and yet at other points in his brief states that the school records would have shown misbehavior on the part of Mr. Gaskin as well as him being placed in special education classes. These kinds of information are often critical in making an evaluation of the cause or the foundation of later behavior by persons like Mr. Gaskin.

B. Trial Counsel's Assertive Failure to Argue the Aggravating and Mitigating Circumstances in Closing Argument.

As has been done throughout the Appellee's brief, he relies very heavily upon the court order in justifying that "Appellant argument has been void of any merit." (AB-59) It is interesting that again in the Appellee's brief he quotes the fact that Mr. Cass, the Defendant's attorney, described Mr. Gaskin as a sociopath but then goes on to say there is no evidence in the record that the Defendant was a sociopath. (AB-59) This is the very type of evidence that, according to the Appellee and according to Mr. Cass, he didn't want before the jury and that

was the reason he made "strategic decisions" to keep the psychological evidence from being presented to the jury. "The State notes, however, that Appellant fails to show what compelling argument was available to counsel regarding the mitigators and in particular the aggravating circumstances." (AB-60)

It is a self-fulfilling prophecy that when one puts on little or no evidence in mitigation, as was done in this case, that you are severely limited in your closing argument. After all, closing argument is based upon what evidence you submitted to the jury as well as trying to offset what evidence was submitted by the State to the Jury. The State, in its brief, argues that, "The State submits that argument during the penalty phase is uniquely a matter of trial strategy and tactics. Making a simple plea for mercy and reminding the jury that it is wrong to take human life under any circumstances is certainly a reasonable argument under the circumstances of this case."

In concluding this Reply Brief, counsel would state that this case certainly from a guilt phase had very, very bad facts to present to a jury. These bad facts in and of themselves required trial counsel to be innovative and think beyond what would be the typical approach to presenting a case to a jury. It is really the opposite of what Appellee's counsel criticizes

post-conviction counsel of having made a decision in a vacuum. It is very evident that Mr. Cass made his decisions in a vacuum and in fact had blinders on when he was making the decisions. It is axiomatic that the more difficult the facts of the death penalty are, the more inventive the trial counsel must be in and effort to convince a jury to vote for life. Mr. Cass' complete failure to investigate the real life story of Mr. Gaskin meets the Strickland standard in that it was ineffective and that it prejudiced Mr. Gaskin to the extent that he received the death penalty in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief has been has been furnished by United States Mail, first class postage prepaid, to all counsel of record on this _____ day of September, 2001.

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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Reply Brief, was generated in Courier New, 12 point font, pursuant to Fla. R. App. P. 9.210.

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