IN THE SUPREME COURT OF FLORIDA

ROBERT DEWEY GLOCK, II,

Appellant, **CASE NO. SC00-2535**

vs.

STATE OF FLORIDA, **CAPITAL CASE**

Appellee **DEATH WARRANT SIGNED**
EXECUTION SET January 11, 2000

_____/

APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PASCO COUNTY, FLORIDA

ANSWER BRIEF OF THE APPELLEE

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SUMMARY OF FACTS AND PROCEDURAL HISTORY

Following his jury trial in 1984, Glock was convicted of first-degree murder, kidnapping and robbery. The trial court, the Honorable Wayne L. Cobb, followed the jury's recommendation and imposed the death sentence for first-degree murder. In addition, Glock was also sentenced to life for the robbery charge.

On direct appeal in Puiatti v. State/Glock v. State, 495 So. 2d 128 (Fla. 1986), the Florida Supreme Court affirmed Glock's convictions and sentences and set forth the following summary of the facts:

> [O]n August 16, 1983, the woman victim arrived at a Bradenton shopping mall. As she exited her automobile, Puiatti and Glock confronted her, forced her back inside the car, and drove away with her. They took $50 from her purse and coerced her into cashing a $100 check at her bank. They then took the victim to an orange grove outside Dade City[,] where they took the woman's wedding ring and abandoned her at the roadside. After traveling a short distance, the appellants determined that the woman should be killed, and they returned in the car to her. When the car's window came adjacent to the woman, Puiatti shot her twice. The appellants drove away, but, when they saw she was still standing, they drove by the victim again and Glock shot her. When the woman did not fall, the appellants made a third pass with the automobile, Glock shot her another time, and the woman collapsed.
>
> Four days later, a New Jersey state trooper stopped the victim's vehicle because its license plate was improperly displayed. Puiatti and Glock occupied the automobile. When neither appellant could present a valid driver's license, the officer requested the

> car's registration. As Puiatti opened the glove box, the trooper saw a handgun. The officer seized that handgun, searched the vehicle, and uncovered another handgun. He then arrested both men for possession of handguns without permits. The police later identified the handgun from the glove box as the murder weapon.
>
> The next day Puiatti and Glock individually confessed to the kidnapping, robbery and killing. These initial confessions varied only to the extent that each blamed the other as instigator of the killing and each offered a differing sequence of who fired the shots at the victim. Each confessor admitted he had fired shots at the victim. Three days later, on August 24, Puiatti and Glock gave a joint statement concerning their involvement in the murder. In this joint confession, the appellants resolved the inconsistencies in their prior statements: they agreed that Glock initially suggested shooting the victim and that Puiatti fired the first shots and Glock fired the final shots.

The trial judge, in accordance with the jury recommendation, imposed the death penalty on both appellants, finding the following three aggravating circumstances: (1) the murder was committed to avoid arrest; (2) the murder was committed for pecuniary gain; and (3) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

As stated above, on direct appeal the Florida Supreme Court affirmed the judgment and sentence in a decision reported as Puiatti v. State/Glock v. State, 495 So. 2d 128 (Fla. 1986). Glock did not seek certiorari review. Thereafter, petitioner sought post-conviction relief in state court and the Florida

Supreme Court affirmed the trial court's summary denial of relief and denied habeas corpus relief. Glock v. Dugger/Glock v. State, 537 So. 2d 99 (Fla. 1989). Glock sought federal habeas relief and the district court denied relief. Glock v. Dugger, 752 F.Supp. 1027 (M.D. Fla. 1990). Initially, a panel of the Court of Appeals affirmed the denial of habeas relief on challenges to the conviction but concluded that error under Espinosa v. Florida, 505 U.S. 1079 (1992) required a new sentencing proceeding. Glock v. Singletary, 36 F.3d 1014 (11th Cir. 1994). The en banc court disagreed and found the Espinosa claim barred by the nonretroactivity principle of Teague v. Lane, 489 U.S. 288 (1989). Glock v. Singletary, 65 F.3d 878 (11th Cir. 1995), cert. denied, 519 U.S. 888, 136 L.Ed.2d 157 (1996). After the en banc decision, the panel remanded the case to the district court to conduct an evidentiary hearing on the claim that trial counsel rendered ineffective assistance at penalty phase. Glock v. Singletary, 84 F.3d 385 (11th Cir. 1996). Following an evidentiary hearing the Magistrate recommended the petition be denied, the district court agreed and the Court of Appeals affirmed. Glock v. Moore, 195 F.3d 625 (11th Cir. 1999), reh. denied, 210 F.3d 395 (11th Cir. 2000). Certiorari was denied on October 2, 2000. Glock v. Moore, 121 S. Ct. 213 (2000).

THE ISSUES RAISED IN PRIOR PROCEEDINGS

Direct Appeal Issues
Florida Supreme Court Case #65,380

On direct appeal following his convictions and death sentence, Glock raised the following issues, which are taken from the Florida Supreme Court's direct appeal opinion in Puiatti v. State/Glock v. State, 495 So. 2d 128 (Fla. 1986):

> 1. The trial court committed reversible error by excluding at the trial stage the prospective jurors opposed to the death penalty.
>
> 2. The trial court erred at the penalty phase of trial by failing to sever his sentencing hearing from that of the co-defendant, Puiatti.
>
> 3. The trial court erred at the penalty phase of trial by finding the aggravating circumstance of cold, calculated, and premeditated.
>
> 4. The trial court erred at the penalty phase of trial by failing to find as a mitigating circumstance Glock's cooperation with the police and his potential for rehabilitation.
>
> 5. The trial court erred at the penalty phase of trial by instructing the jurors and receiving their penalty recommendation on a Sunday.

On August 21, 1986, the Florida Supreme Court affirmed Glock's convictions and sentence of death. Puiatti v. State/Glock v. State, 495 So. 2d 128 (Fla. 1986).

State Court Collateral Proceedings
Florida Supreme Court Case #73,493

After the Governor signed a death warrant on October 28, 1988, the Office of the Capital Collateral Representative filed on Glock's behalf a Rule 3.850 motion for post-conviction relief raising the following sixteen (16) issues as stated in Glock v. Dugger, 537 So. 2d 99, 101 (Fla. 1989):

> 1. Whether the admission of the codefendant's confession and of his statements during the joint confession violated Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).
>
> 2. Whether the trial court's denial of a severance at guilt and penalty phases deprived petitioner of a fair trial.
>
> 3. Whether Glock was denied effective assistance of counsel at guilt and penalty phases of trial.
>
> 4. Whether the trial court impermissibly shifted the burden of proof in its instructions at sentencing and applied an improper standard in imposing sentence.
>
> 5. Whether professionally inadequate evaluations by mental health experts resulted in a denial of individualized and reliable sentencing.
>
> 6. Whether improper consideration of the victim's character and victim impact information violated Glock's Eighth and Fourteenth amendment rights under Booth v. Maryland, 482 U. S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987).
>
> 7. Whether prosecutor's argument in closing at the guilt phase regarding premeditation was improper.
>
> 8. Whether the jury was misinformed and misled by instructions and arguments which allegedly diluted their sense of responsibility, contrary to Caldwell v. Mississippi, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231 (1985).

9. Whether the jury was misled and incorrectly informed about its function at capital sentencing.

10. Whether the trial court improperly refused to provide the jury with proper instructions to channel their discretion.

11. Whether the prosecutor's arguments and remarks violated the golden rule.

12. Whether Glock's emotional dependency precluded him from waiving Miranda rights and giving a voluntary confession.

13. Whether the joint sentencing proceeding and joint sentencing order deprived Glock of his Eighth and Fourteenth amendment rights.

14. Whether the trial court refused to recognize mitigating circumstances presented in the record.

15. The felony-murder instruction.

16. The trial court's refusal to provide requested instructions regarding mitigating factors.

The trial judge, the Honorable Wayne L. Cobb, on December 22, 1988 summarily denied each of Glock's claims.

Subsequently, Glock filed his appeal of the summary denial of his 3.850 motion, petitioned for writ of habeas corpus and requested a stay of execution. As stated in the Florida Supreme Court opinion in Glock v. Dugger, 537 So. 2d 99 (Fla. 1989), he emphasized the following two (2) principal claims:

1. That the admission of codefendant Puiatti's confession violated Cruz v. New York, 481 U.S. 186, 107 S.Ct. 1714, 95 L.Ed.2d 162 (1987).

> 2. That trial counsel was ineffective for failure to obtain additional information from Glock's family to aid the mental health experts in showing the deficiencies in Glock's personality which affected Glock's confession and presentation of evidence in the penalty phase.

537 So. 2d 99 at 101

Glock's habeas corpus petition raised the following ten (10) issues:

> 1. Ineffective assistance of counsel on direct appeal.
>
> 2. Admission of codefendant's statements and joint confession violated Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).
>
> 3. Denial of severance at guilt and penalty phases.
>
> 4. Improper burden shifting by court.
>
> 5. Victim character and victim impact (Booth v. Maryland,482 U. S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987)).
>
> 6. Prosecutor's remark regarding premeditation during guilt phase.
>
> 7. Denial of individual sentencing; the court did not give channeled instruction.
>
> 8. Improper golden rule argument in opening argument and inflammatory remark during closing argument.
>
> 9. Joint sentencing order deprived defendant of Eighth and Fourteenth amendment rights.
>
> 10. Court's refusal to provide requested instructions to be considered in mitigation.

The Florida Supreme Court affirmed the trial court's summary

denial of 3.850 relief, found no merit in any of the grounds set forth in Glock's petition for habeas corpus, denied the stay of execution and all relief.

Federal Habeas Corpus Relief Denied
U.S.D.C., Middle District Court Case No. 89-54-CIV-T-17

On January 3, 1989, Glock sought federal habeas relief by filing his Writ of Habeas Corpus and Motion for Evidentiary Hearing. In his petition for federal habeas corpus relief filed pursuant to 28 U.S.C. §2254, Glock raised the following seventeen (17) claims as stated in the district court's opinion in Glock v. Dugger, 752 F. Supp. 1027 (M.D. Fla. 1990):

> 1. The admission of codefendant's confession and statements from the codefendant's joint confession violated Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) and Cruz v. New York, 481 U.S. 186, 107 S.Ct. 1714, 95 L.Ed.2d 162 (1987).
>
> 2. The trial court erred in not granting a severance at either phase of the proceedings, penalty or guilt.
>
> 3. Glock's counsel was ineffective at the guilt and penalty phases of the trial.
>
> 4. The trial court unconstitutionally shifted the burden in its instruction concerning sentencing and its imposition of the sentence.
>
> 5. The mental health experts rendered professionally inadequate evaluations resulting in an unreliable sentencing determination.
>
> 6. Evidence of the victim's character and victim impact evidence were improperly considered by the jury and the court.

7. The trial court erred in permitting the prosecutor to state during closing argument, at the guilt phase, that premeditation was presumed under the felony murder theory.

8. The jury instructions and prosecutor's comments violated Caldwell v. Mississippi, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231 (1985); Adams v. Dugger, 816 F.2d 1493 (11th Cir. 1987); cert. granted, 485 U.S. 933, 108 S.Ct. 1106, 99 L.Ed.2d 267 (1988); and Mann v. Dugger, 844 F.2d 1446 (11th Cir., petition for cert. denied, 489 U.S. 1071, 109 S.Ct. 1353, 103 L.Ed.2d 821 (1988).

9. The jury was misled by the sentencing instructions.

10. The trial court erred in refusing to provide instructions necessary to guide the jury's [sic] in assessing the aggravating factors.

11. The prosecutor violated the golden rule during his opening statement and made an inflammatory remark during closing argument.

12. Glock's emotional dependency precluded him from knowingly and intelligently waiving his rights under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

13. Glock was prejudiced by the joint sentencing and order.

14. The trial court failed to realize mitigating circumstances in the record.

15. The instructions on felony murder violated Glock's constitutional rights.

16. The trial judge erred in refusing to provide the jury with the defense's requested instructions concerning mitigating factors.

17. Glock was denied the effective assistance of counsel on direct appeal to the Florida Supreme Court.

Glock v. Dugger, 752 F. Supp. 1027, 1028 (M.D. Fla. 1990)

No evidentiary hearing was held and, on December 12, 1990, the United States District Court entered a written order denying federal habeas relief. Glock v. Dugger, 752 F. Supp. 1027 (M.D. Fla. 1990).

Federal Habeas Corpus Appeal
11th Circuit Case No. 91-3528

Glock appealed the denial of habeas corpus relief in Glock v. Singletary, 36 F.3d 1014 (11th Cir. 1994). Glock raised the following eight (8) claims:

1. Whether the district court erred in failing to hold an evidentiary hearing.

2. Whether Robert Glock was denied effective assistance of counsel at the sentencing phase of his capital trial.

3. Whether appellant's constitutional rights were violated by the trial court's refusal to sever the case from Glock's codefendant and the admission of the codefendant's statements during the joint trial.

4. Whether the joint sentencing proceeding and joint sentencing order violated appellant's Eighth and Fourteenth Amendment rights.

5. Whether appellant was denied the right to a reliable capital sentence when the jury allegedly did not receive instructions channeling its discretion regarding the aggravating circumstances.

6. Whether the Eighth amendment was violated by the trial court's failure to find additional mitigating factors.

7. Whether the jury was improperly led to believe that its sentencing recommendation was inconsequential and that sentencing responsibilities rested with the judge in violation of Mann v. Dugger, 844 F. 2d 1466 (11th Cir. 1988).

8. Whether the sentencing jury received unconstitutional instructions which shifted the burden of proof in the penalty phase and that this improper standard was used in imposing sentence in violation of the Eighth and Fourteenth Amendments.

On October 7, 1994, the Eleventh Circuit panel affirmed the district court's denial of habeas corpus relief with respect to Glock's conviction for first degree murder but reversed the district court's denial of relief on the claim that the instruction on the HAC factor violated the Eighth amendment, contrary to Espinosa v. Florida, 505 U.S. 1079, 112 S.Ct. 2926, 120 L.Ed.2d 854 (1992). Glock v. Singletary, 36 F.3d 1014 (11th Cir. 1994).

Following applications for en banc review, the court vacated the panel's opinion. Glock v. Singletary, 51 F.3d 942 (11th Cir. 1995). The court en banc thereafter ruled that relief under Espinosa was barred by the retroactivity principles of Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 384 (1989)and the en banc court agreed with the panel conclusion that any error was harmless with respect to the claim asserted under Cruz v. New York, 481 U.S. 186, 107 S.Ct. 1714, 95 L.Ed.2d 162 (1987). Further, the Court of Appeals ordered a remand to

the panel to address the remaining challenges Glock had to the sentence. Glock v. Singletary, 65 F.3d 878 (11th Cir. 1995), cert. denied, 519 U.S. 888, 117 S.Ct. 225, 136 L.Ed. 2d 157 (1996).

Remand for Evidentiary Hearing
Eleventh Circuit Case No. 91-3528

On May 15, 1996, the Eleventh Circuit Court of Appeals panel, following remand from the en banc court, issued its opinion addressing the following remaining issues brought by Glock under the Eighth and Fourteenth Amendments as stated in that court's opinion in Glock v. Singletary, 84 F.3d 385 (1996):

> 1. The trial court refused to sever Glock's sentencing proceeding from his codefendant's, thereby depriving him of individualized sentencing.
>
> 2. The trial court failed to find three non-statutory mitigating circumstances.
>
> 3. The trial court's charge to the jury shifted to petitioner the burden of proof on the appropriateness of the death sentence.
>
> 4. The trial court's charge to the jury "diluted" the jury's sense of responsibility for the sentence petitioner would receive.
>
> 5. Petitioner's attorney rendered ineffective assistance of counsel in failing to discover through routine investigation mitigating evidence and to present that evidence at the separate sentencing proceedings before the jury and the court.

The panel found no merit in claims 1 through 4, supra, and

affirmed the district court but concluded that the claim of ineffective assistance of counsel at penalty phase required an evidentiary hearing and remanded the case to the district court. Glock v. Singletary, 84 F.3d 385, cert. denied, 519 U.S. 1044, 117 S.Ct. 616, 136 L.Ed.2d 540 (1996).

Federal Appeal of Denial of Habeas Corpus Relief
Eleventh Circuit Case No. 98-3425

Following remand to the district court, an evidentiary hearing was conducted on Glock's claim that trial counsel was ineffective in the penalty phase for failure to investigate and present additional mitigating evidence. After the hearing, Magistrate Judge Jenkins issued a comprehensive Report and Recommendation concluding that habeas relief should be denied. The Report and Recommendation was adopted by District Judge Kovachevich. Glock appealed and the Court of Appeals affirmed the denial of relief, finding that Glock failed to satisfy the prejudice prong of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *See*, Glock v. Moore, 195 F.3d 625 (11th Cir. 1999), cert. denied, __ U.S. __, 121 S.Ct. 213 (2000).

PRELIMINARY STATEMENT ON PROCEDURAL BARS

Claims that have been raised and rejected on direct appeal are barred and it is inappropriate to use a different argument to relitigate the same issue, Medina v. State, 573 So. 2d 293 (Fla. 1990), even if couched in ineffective assistance language. Johnson v. Singletary, 695 So. 2d 263, 265 (Fla. 1996). See Robinson v. State, 707 So. 2d 688 (Fla. 1998); Valle v. State, 705 So. 2d 1331, 1336, n. 6 (Fla. 1997); Cherry v. State, 659 So. 2d 1069 (Fla. 1995). See also Asay v. State, ___ So. 2d ___, 25 Fla. L. Weekly S523 (Fla. 2000)(approving summary denial of several claims on procedurally barred claims that were raised and rejected on direct appeal, barred claims that although not raised on direct appeal could have been; approving summary denial of claims unsupported by sufficient facts); P.A. Brown v. State, 755 So. 2d 616, 619-21, n. 1-7 (Fla. 2000); Thompson v. State, ___ So. 2d ___, 25 Fla. L. Weekly S346 (Fla. 2000); Huff v. State, ___ So. 2d ___, 25 Fla. L. Weekly S411, 412 (Fla. 2000); Sireci v. State, ___ So. 2d ___, 25 Fla. L. Weekly S673 (Fla. 2000).

The murder in this case occurred in 1983 and Glock's convictions and sentence of death have been final since 1986. More than a decade of collateral litigation has demonstrated no basis for relief, and it is time for Glock's sentence to be

carried out. Glock has waited until the signing of his second warrant in November, 2000 before filing his belated requests for records under Chapter 119 long after the initial round of state and federal collateral litigation. Each claim is untimely, successive, and an abuse of discretion. To the extent that Glock raises claims which he asserts are based on "new evidence," Glock cannot establish the due diligence component of Rule 3.850(b)(1), and, because of that failure, is not entitled to an evidentiary hearing on that issue, either. See, Fla. R. Crim. P. 3.850(f); Mills v. State, 684 So. 2d 801 (Fla. 1996); Bolender v. State, 658 So. 2d 82 (Fla. 1995); Zeigler v. State, 632 So. 2d 48 (Fla. 1993); Foster v. State, 614 So. 2d 455 (Fla. 1992). Any request for relief should be denied.

To the extent that Glock asserts that the claims contained in the motion could not have been raised within the time limitations contained in Rule 3.850 because he has only now obtained the information upon which those claims are based, that claim has no factual basis. The Public Records Act (Chapter 119 of the Florida Statutes), has been available to Glock at all relevant times. Because that is true, Glock cannot avoid the preclusive effect of Rule 3.850's time limitation on the bringing of successive claims. See, Zeigler, supra; Zeigler v. State, 654 So. 2d 1162 (Fla. 1995); Agan v. State, 560 So. 2d

222 (Fla. 1990); Demps v. State, 515 So. 2d 196 (Fla. 1987).

Further, as the motion is a successive motion for postconviction relief, filed more than one year after finality of judgment and sentence, it is Glock's initial burden to demonstrate that all of the matters asserted therein could not have been raised earlier through the exercise of due diligence, and that, in fact, all matters had been raised within one year of their discovery through due diligence. Glock cannot satisfy this threshold showing, and summary denial of this successive motion is in accordance with such binding precedent of the Florida Supreme Court as Mills v. State, 684 So. 2d 801, 804-5 (Fla. 1996), Stano v. State, 708 So. 2d 271 (Fla. 1998), Buenoano v. State, 708 So. 2d 941, 952 (Fla. 1998), Remeta v. State, 710 So. 2d 543, 546-8 (Fla. 1998), and Davis v. State, 742 So. 2d 233 (Fla. 1999). Both Buenoano and Remeta expressly hold that a capital defendant's "eleventh hour" initiation of the public records process and/or litigation does not provide a basis for stay of execution or substantive relief. Buenoano, 708 So. 2d at 952-3 ("The Public Records Act has been available to Buenoano since her conviction; but most of the records she alleges were not disclosed prior to the filing of her latest rule 3.850 motion were not requested until January 1998, or later. . . . Buenoano has not alleged that through the exercise

of due diligence she could not have made these requests within the time limits of rule 3.850."); Remeta, 710 So. 2d at 546 ("The public records materials could have been obtained and investigated many years ago; instead, Remeta waited until the 'eleventh hour' to attempt to investigate the issues raised in this claim. Remeta has provided no basis for why the information he now seeks to investigate 'could not have been ascertained by the exercise of due diligence.'"). And most recently in Sims v. State, 753 So. 2d 66, 70 (Fla. 2000), the Florida Supreme Court re-emphasized:

> The language of section 119.19 and of rule 3.852 clearly provides for the production of public records after the governor has signed a death warrant. However, it is equally clear that this discovery tool is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief. To prevent such a fishing expedition, the statute and the rule provide for the production of public records from persons and agencies who were the recipients of a public records request at the time the defendant began his or her postconviction odyssey. The use of the past tense and such words and phrases as "requested," "previously," "received," "produced," "previous request," and "produced previously" are not happenstance.
>
> This language was intended to and does convey to the reader the fact that a public records request under this rule is intended as an update of information previously received or requested. To hold otherwise would foster a procedure in which defendants make only a partial public records request during the initial postconviction proceedings and hold in abeyance other requests until such time as a warrant is signed. Such is neither the spirit nor intent of the public records law. Rule 3.852 is not intended

> for use by defendants as, in the words of the trial court, "nothing more than an eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate area of inquiry"."
>
> Sims, at 70 [emphasis supplied]

In addition to being time-barred, any claim is subject to the Florida Rule of Criminal Procedure 3.850(f) successive petition bar. Any claims he now asserts were either decided on the merits in Glock's prior Rule 3.850 proceedings or could and should have been raised in Glock's prior collateral proceeding and are, therefore, procedurally barred. Mills v. State, 684 So. 2d 801 (Fla. 1996); Atkins v. State, 663 So. 2d 524, 626 (Fla. 1995); Bolender v. State, 658 So. 2d 82 (Fla. 1995); Zeigler v. State, 654 So. 2d 1162 (Fla. 1995); Zeigler v. State, 632 So. 2d 48 (Fla. 1993); Foster v. State, 614 So. 2d 455 (Fla. 1992).

Glock cannot obtain relief in claims that could have been but were not raised on direct appeal. Those claims are procedurally barred under the provisions of Rule 3.850(c), which states "[t]his rule does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence." *See,* James v. State, 615 So. 2d 668 (Fla. 1993); Kelley v. State, 569 So. 2d 754 (Fla. 1990); Lambrix v. State,

559 So. 2d 1137 (Fla. 1990); Henderson v. State, 522 So. 2d 835 (Fla. 1988).

SUMMARY OF THE ARGUMENT

ISSUE I. The trial court properly and summarily denied relief and there is no impropriety in the order denying relief which the lower court entered subsequent to opposing counsel's review and submitted objections to the state's proposed order. See, e.g. Diaz v. Dugger, 719 So. 2d 865 (Fla. 1998); Hardwick v. Dugger, 648 So. 2d 100, 103-104 (Fla. 1994)(finding no impropriety relating to proposed order submitted by the state where the state served a copy of the proposed order on defense collateral counsel and counsel filed an extensive response to the proposed order); Groover v. State, 640 So. 2d 1077 (Fla. 1994)(finding no merit to argument that the trial court erred by adopting the state's proposed order denying relief on his 3.850 motion).

ISSUE II. Glock's claim that New Jersey officers engaged in a practice of impermissible racial drug profiling of drivers in the late 1980's and 1990's must be deemed procedurally barred for the failure to assert in prior pleadings and is meritless. The officer who stopped the vehicle was black, the occupants were white and the officer testified as to the legitimate basis for the stop. The subsequent, voluntary confessions would be admissible in any event. See Voorhees v. State, 699 So. 2d 602 (Fla. 1997); Sager v. State, 699 So. 2d 619 (Fla. 1997).

ISSUE III. Glock's constitutional and/or statutory rights have not been violated by the clemency process. Glock had a lawyer at his first clemency proceeding in 1987; there is no requirement that counsel must be appointed either initially or in subsequent clemency proceedings. See Provenzano v. State, 739 So. 2d 1150 (Fla. 1999). Glock has not been denied the opportunity to submit any desired materials to the Governor.

ISSUE IV. Glock has not established reversible error based upon the trial court's rulings on his eleventh hour demands for public records. Glock's demands for records are nothing more than a fishing expedition condemned by this Court in Sims and Bryan.

ARGUMENT

ISSUE I

THE TRIAL COURT DID NOT ERR IN ITS WRITTEN ORDER OR IN SUMMARILY DENYING RELIEF.

Glock first takes issue with the trial court's order, contending that it was improper for the court not to write its own order. At the conclusion of the Hearing on Motions on December 7, 2000, the trial court denied relief and inquired whether the state would prepare an order. Prosecutor Crow answered that the state would draft a proposed order and provide it to opposing counsel before providing to the Court (HT 122).

Thereafter, the state submitted a proposed order and opposing counsel filed objections to the proposed order on Friday, December 15, 2000, and requested that the court draft its own order. Subsequently, on December 18, 2000, Judge Cobb signed a written order, deleting certain portions of the proposed order submitted by the state, presumably, in part, to satisfy concerns urged in Glock's objections.

Appellant's complaint now concerning Judge Cobb's order is meritless. See, e.g. Diaz v. Dugger, 719 So. 2d 865 (Fla. 1998); Hardwick v. Dugger, 648 So. 2d 100, 103-104 (Fla. 1994)(finding no impropriety relating to proposed order submitted by the state where the state served a copy of the

proposed order on defense collateral counsel and counsel filed an extensive response to the proposed order); Groover v. State, 640 So. 2d 1077 (Fla. 1994)(finding no merit to argument that the trial court erred by adopting the state's proposed order denying relief on his 3.850 motion).

If Glock preferred the option of submitting a proposed order he certainly did not offer any such alternative. The instant ruling does not have the same infirmities presented in Card v. State, 652 So. 2d 344 (Fla. 1994) or as alleged in Maharaj v. State, ___ So. 2d ___, 25 Fla. L. Weekly S1097 (Fla. 2000).

Additionally, the lower court correctly denied relief without an evidentiary hearing since none of the claims presented merited further evidentiary consideration as will be explained more fully, infra.

ISSUE II

THE CLAIM OF IMPERMISSIBLE RACIAL DRUG PROFILING BY NEW JERSEY OFFICERS.

Glock contends relief may be available on the contention that New Jersey law enforcement authorities have been accused of, or involved in, the improper stopping of automobiles based on racial profiling for drug offenses and apparently suggests that this may be relevant to his case.

In the first instance it must be noted that, as the trial court stated in its order, Glock and Puiatti are both Caucasian. Thus, whatever may be the situation with New Jersey officers engaging in racial discrimination by stopping members of a racial minority, it can have no applicability here. Even if Glock, as a Caucasian, has standing to assert racial profiling -- quite apart from the fact that such a claim should be deemed procedurally barred for the failure to assert at the time of trial, or on direct appeal, or on his prior motion for postconviction relief or on his prior habeas corpus action in the Florida Supreme Court, or in his lengthy litigation in the federal courts seeking habeas corpus relief for more than a dozen years - - such a claim now is also meritless and frivolous.

To obtain relief under a newly discovered evidence claim

Glock must show that the newly discovered evidence was both unknown by the trial court, by the party, or by counsel at the time of trial, and that Glock or his counsel could not have known of it by the use of diligence and that the evidence is "of such nature that it would probably produce an acquittal on retrial." Jones v. State, 709 So. 2d 512, 521 (Fla.1998). Accord, Asay v. State, 2000 WL 854255, 25 Fla. L. Weekly S523 (Fla. 2000).

1) Glock has not established that the material or the argument upon which he now bases this claim was not available to him prior to the instant proceeding.

Assuming, *arguendo*, that Glock had any colorable basis upon which to suspect that the stop of two male Caucasians with an illegible license plate was the result of a law enforcement agency's targeting of minority groups, discovery would have been available to him at the time of the initial trial.[1] The failure

[1] Kennedy, infra., a 1991 decision, discusses the effect of a racial profiling claim on pretrial discovery requests relating to allegations of improper police conduct. Relying on federal case law, the Kennedy court concluded that a defendant establishes his right to discovery if he shows he has a "colorable basis" for a selective prosecution claim. See Kennedy, 247 N.J. 21, 31, 588 A.2d 834, 839. In other words, when a defendant presents "some evidence tending to show the existence of essential elements of the defense and that the documents in the government's possession would indeed be probative of these elements," he would be entitled to discovery of the claimed documents. See Kennedy, 247 N.J. at 32, 588 A.2d at 839 (citations omitted). Glock cannot and could not meet

to do so precludes the initiation of litigation on this basis at this late date.

Not only do Soto, Letts, and Kennedy, as relied upon by Glock to establish the impropriety of racial profiling, predate these pleadings by several years, the report of the Attorney General of New Jersey describing the racial profiling has been a matter of public record for over a year since April of 1999. Thus Glock could have availed himself of this information rather than waiting more than a year for an eleventh hour, last minute application to stave off imminent execution. See *Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling* of April 20, 1999 by Attorney General Peter Verniero, HTTP//www.state.NJ.US/IPS/INTM-419.pdf. Consequently, this claim is untimely and therefore barred. See Rule 3.850(b), Fla. R. Crim. P.; Mills v. State, 684 So. 2d 801, 806 and fn. 7 (Fla. 1996)("Mills must show in his motion for relief both that this evidence could not have been discovered with the exercise of reasonable diligence and that the motion was filed within one year of the discovery of evidence upon which avoidance of the time limit was based."); Buenoano v. State, 708 So. 2d 941, 947-48 (Fla. 1998)("The facts on which these claims are based were

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this standard.

unknown to Buenoano and her counsel and could not have been ascertained by the exercise of due diligence within the time limitations of Rule 3.850, and the claims were filed within one year of learning of the OIG's report."[emphasis supplied].

2) Nor has Glock established that the evidence is "of such nature that it would probably produce an acquittal on retrial." Absent a showing that the evidence now presented would have resulted in the suppression of the confession and the likelihood of different result at trial, Glock is not entitled to relief.

At trial Glock filed a motion to suppress and following a complete and thorough evidentiary hearing, the trial court denied relief and found the stop to be proper. The trial court record reflects that at the motion to suppress hearing on March 13, 1984, Trooper Moore of the New Jersey State Police Department testified that within his area of assignment on the New Jersey Turnpike he stopped a Toyota motor vehicle at approximately Mile Marker 14.6 at about 4 p.m. on August 20, 1983 (R395-398). As he passed by it he noticed the license plate on it wasn't legible, contrary to state law, and he proceeded to stop the vehicle. Glock was driving the vehicle and Puiatti was slouched over on the passenger's side. A photo depicting the license plate as he saw it was introduced into

evidence (R400). It is a motor vehicle driver's violation to have the license tag improperly displayed. Moore asked Glock for a driver's license and registration and Glock responded that he didn't have a license, that it was suspended and Puiatti admitted that his license too was suspended (R401-02). Moore asked for the registration, who owned the vehicle. Puiatti and Glock looked into the glove compartment and Moore observed the butt of a handgun. Glock looked at the registration and as he handed it to the officer, said it was Mr. Ritchie's. Glock explained that the owner was his brother-in-law. Since it was against the law in New Jersey to carry a handgun without a permit, Moore asked if he minded if Moore looked in the car and Glock said no. He patted down both Glock and Puiatti and Glock stated there was a gun in the car (R402-404). Moore told him to stay where he was and Moore removed the gun; he emptied the chamber of the .38 caliber revolver, put the bullets in his pocket and placed the gun on the passenger seat. Moore also found a .22 derringer in the glove compartment and placed it in his pocket. In response to a question, Glock explained the guns were his brother-in-law's, a police officer, and that it was too far north to go around and go back. Moore placed them under arrest for possession of the guns (R404-06). An NCIC check of the vehicle revealed that the vehicle was stolen and that the

owner was a homicide victim (R412). On cross-examination, Moore stated the only reason he stopped the car was because of the tag (R419). The trial court denied the motion to suppress, ruling that Trooper Moore made a lawful, reasonable stop (R703). Trooper Moore essentially repeated his testimony at trial (R1769-92). As the trial court's order found, nothing proffered would challenge in any way Moore's testimony regarding the lawful stop. Glock's most recent contention is without merit and must be rejected.

Glock fully litigated previously in the motion to suppress his claim that the stop was impermissible and that his confessions should be suppressed and was unsuccessful. He is not entitled now simply to attempt to relitigate any argument that the stop was improper under New Jersey law, or to challenge anew this court's prior resolution that the stop was an appropriate one based on probable cause.

Assuming, *arguendo*, that Glock could show some racial profiling, the stop in the instant case still cannot successfully be challenged. In determining whether an automobile stop for a minor traffic violation was permissible, a reviewing court must apply the "reasonable officer" test. Under Florida, New Jersey and federal law, if an officer, acting within the proper scope of his lawful authority, would have

effected the stop absent any improper motive, then the stop was lawful, even if a pretextual motive may have influenced the officer's decision. See State v. Daniel, 665 So. 2d 1040, 1043 (Fla. 1995) (If officer would have effected the stop absent any improper motive, then the stop was lawful even if a pretextual motive may have influenced the officer's actions); Maryland v. Macon, 472 U.S. 463 (1985) (Whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time, and not on the officer's actual state of mind at the time the challenged action was taken); State v. Kennedy, 247 N.J. 21, 27, 588 A.2d 834, 837 (N.J. Sup. Ct. 1991). (The proper inquiry for determining the constitutionality of a search and seizure is whether the conduct of the officer was objectively reasonable without regard to his or her underlying motives or intent.) See also U.S. v. Sokolow, 490 U.S. 1, 10 (1989); and State v. Bruzzess, 94 N.J. 210, 220, 463 A.2d 320 (1983), cert. denied, 484 U.S. 1030 (1984).

Even if Glock demonstrated that his stop was impermissible, the subsequent voluntary confessions would be admissible. See Voorhees v. State, 699 So. 2d 602 (Fla. 1997)(approving trial court's determination that statements made to Pasco County authorities constituted an act of free will and there were

sufficient intervening factors to dissipate and purge any taint associated with earlier illegal detention by Mississippi authorities); Sager v. State, 699 So. 2d 619 (Fla. 1997)(same).

In short, the profile of the facts of this case do not meet the profile he seeks to adopt. The driver of the vehicle here, Glock and his companion Puiatti, were not black or Hispanic and the evidence is clear that the stop by Trooper Moore occurred because of his observation of the problem with Glock's license plate. Even the appendices attached to the petition are not helpful to the claim. For example, in Appendix 3 Glock includes the certification of Kenneth Wilson, a former New Jersey State Trooper who began working in that employ in 1988, some five years after Glock's apprehension for the Ritchie homicide. Mr. Glock is not entitled to further consideration of his previously-rejected legal claims, merely on the basis that some officers years after the event in question may have been involved in improper racial policies unrelated to the case at issue.

ISSUE III

GLOCK'S CONSTITUTIONAL RIGHTS HAVE NOT BEEN VIOLATED BY THE CLEMENCY PROCESS.

Glock also alleges that he has been denied due process by the clemency process employed in his case. This Court has consistently rejected similar arguments, acknowledging that clemency is "peculiarly within the domain of the executive branch of government." Provenzano v. State, 739 So. 2d 1150, 1155 (Fla. 1999), quoting Bundy v. State, 497 So. 2d 1209, 1211 (Fla. 1986). In Bundy, the Court stated:

> In the final claim raised under his 3.850 motion, appellant contends that he must be allowed time to prepare and present an application for executive clemency before sentence may be carried out in this case. In the death warrant authorizing appellant's execution, the governor attests to the fact that "it has been determined that Executive Clemency, as authorized by Article IV, Section 8(a), Florida Constitution, is not appropriate." It is not our prerogative to second-guess the application of this exclusive executive function. First, the principle of separation of powers requires the judiciary to adopt an extremely cautious approach in analyzing questions involving this admitted matter of executive grace. Sullivan v. Askew, 348 So.2d 312 (Fla.), cert. denied, 434 U.S. 878, 98 S.Ct. 232, 54 L.Ed.2d 159 (1977). As noted in In re Advisory Opinion of the Governor, 334 So.2d 561, 562-63 (Fla. 1976), "[t]his Court has always viewed the pardon powers expressed in the Constitution as being peculiarly within the domain of the executive branch of government." See also Ex Parte White, 131 Fla. 83, 178 So. 876 (1938).
>
> Bundy v. State, 497 So. 2d at 1211

In the death warrant authorizing Glock's execution, Governor

Bush attests to the fact that "it has been determined that Executive Clemency, as authorized by Article IV, Section 8(a), Florida Constitution, is not appropriate." Thus, clemency has already been denied, and no reasonable basis for interfering with this executive function has been offered.

Mr. Glock had his initial clemency review in 1987 prior to the signing of his first warrant, in conformity with the rules and practice in effect at that time. Even if such a claim were reviewable, any complaint that Glock may be asserting with that procedure now, a dozen years later is procedurally barred for the failure to urge any constitutional violation in his prior motion for post-conviction relief in 1989 in the state courts or thereafter in his federal litigation.

Any complaint he now urges to this Court regarding Governor Bush's most recent signing of his death warrant on November 14, 2000 and his determination that executive clemency was not appropriate is unavailing since this is Glock's second death warrant, i.e., the second time the Governor of Florida has made a determination that clemency is not appropriate. See Bundy v. State, 497 So. 2d 1209, 1211 (Fla. 1986)(The executive branch is not required to go through the motions of holding a second proceeding when it could well have properly determined in the first that appellant was not and never would be a likely

candidate for executive clemency); see also Provenzano v. State, 739 So. 2d 1150, 1155 (Fla. 1999) (finding no merit to Provenzano's request for counsel at second clemency hearing).

There is nothing in the Executive Rules of Clemency that compels the type of procedures urged by Glock to be employed prior to signing a second or successive warrant. In Appendix 19 to the Motion for Post-Conviction Relief the pertinent Rule 15 which is applicable to all cases where the sentence of death has been imposed provides in Subsection B that the Florida Parole Commission may conduct a thorough and detailed investigation into all factors relevant to the issue of clemency and provide a final report to the Clemency Board. The investigation is not limited to (1) an interview with the inmate, who may have counsel present, by the Commission, (2) an interview ,if possible, with the trial attorneys who prosecuted the case and defended the inmate, (3) an interview, if possible, with the presiding judge and (4) an interview, if possible, with the defendant's family. That investigation was done in the initial 1987 proceeding. Subsection C (Monitoring Cases for Investigation) of the rule specifies:

> "Failure to conduct or complete the investigation pursuant to those rules shall not be ground for relief for the death penalty defendant. ... Cases investigated under previous administrations may be reinvestigated at the Governor's discretion." [emphasis supplied]

Appellee notes that Glock has insisted repeatedly throughout these pleadings that he has never had an attorney in clemency proceedings. In the Motion for Post-Conviction Relief Glock represented:

> "Mr. Glock was never provided with an attorney to assist him in the clemency process." (Motion to Vacate, p. 30)[emphasis in original]
>
> "Hauser was a volunteer. He dismissed his collateral counsel and waived his collateral appeals. Hauser neither requested nor wanted clemency proceeding, yet he was provided with clemency counsel Mr. Glock wants full and fair clemency procedures, including the appointment of counsel, yet none has been provided." (Motion to Vacate, p. 60, footnote 10)[emphasis supplied]

The motion then suggests the absence of counsel at about the time of the first warrant in 1988, noting that in post-conviction proceedings the Capital Collateral Counsel Office was statutorily forbidden to petition for clemency, and that during the first warrant collateral counsel was prevented from fully investigating many of Glock's factual claims. (Motion to Vacate, p. 61).

The claim that Glock never had a clemency attorney is demonstrably untrue. The transcript of the proceeding on December 3, 1987 before the Florida Cabinet sitting as the

Clemency Board of the State of Florida demonstrates that Glock was represented by attorney William Dayton who argued, among other things, that Glock was "a small person whose traumatic childhood seems to have retarded his emotional development", that his colleague Puiatti "seems to have taken an almost paternal interest in Glock's progress in crime", that expert testimony had been presented that both Glock and Puiatti were followers and that both gave prompt and extensive confessions. Counsel further requested the Clemency Board to consider "his tragic childhood" and the chemistry with Puiatti.[2]

The contention or suggestion that a substantial amount of mitigation was only subsequently obtained and presented in post-conviction litigation is belied by the fact that as this Court well knows, as soon as the first warrant was signed Glock was able to present as an Appendix to his initial motion for post-conviction relief multiple affidavits of family members, friends and others to support an assertion that a hearing was required on the claim of ineffective assistance of trial counsel at the sentencing phase. As this Court well knows, both the trial court and this Court concluded that summary denial of relief was

[2]While at the hearing before Judge Cobb on December 7, 2000 Glock's counsel seemed to acknowledge that counsel participated in the earlier clemency proceeding, appellee will furnish herewith the excerpted transcript revealing attorney Dayton's participation as Exhibit 1.

appropriate. See Glock v. State/Glock v. State, 537 So. 2d 99 (Fla. 1989). While it is true that the federal courts thereafter deemed it appropriate to conduct an evidentiary hearing, the result was in concurrence with this Court's determination that the prejudice prong of Strickland remained unsatisfied. The Eleventh Circuit Court of Appeals agreed with this Court that much of what was presented was cumulative to that urged before the trial judge and jury, and that which was not cumulative likely would have yielded a worse result. Glock v. Moore,195 F.3d 625, 640 (11th Cir. 1999),reh. denied, 210 F.3d 395 (11th Cir. 2000). There can be no merit to the claim that the Constitution requires the Governor prior to signing a second warrant to reconsider all material that has been presented, considered and rejected by the judiciary - state and federal - in consideration of whatever legal claims have been urged. If there were such a requirement the process would be never ending as a capital defendant would simply add a new witness or document in subsequent judicial actions.

Appellant's contention that the Governor has failed to comply with the Rules of Executive Clemency is meritless. A cursory review of Appendix 19 to Glock's Motion to Vacate - the Rules of Executive Clemency effective January 1, 2000 recites Rule 15 dealing with Commutation of Death Sentences provides in

Subsection B that in all cases where a death penalty has been imposed "the Florida Parole Commission may conduct a thorough and detailed investigation into all factors relevant to the issue of clemency. . . ." And Subsection C provides:

> "Failure to conduct or complete the investigation pursuant to these rules shall not be ground for relief for the death penalty defendant. ... Cases investigated under previous administrations may be reinvestigated at the Governor's discretion."

While these rules allude to clemency counsel, see, e.g. Subsection H referring to the time limits at clemency hearing, such provisions obviously relate to the situation where the death row inmate has counsel (as Glock had Mr. Dayton in 1987) and is not intended to compel the Governor to see that counsel is appointed again.

Glock's equal protection argument is equally without merit. While he cites cases like Hauser (a volunteer) where clemency counsel was available it is also true that it was Hauser's first death warrant that resulted. Hauser is thus not comparable to Glock who at the initial clemency proceeding in 1987 was represented by attorney Dayton. Similarly, while it may be true that in some successor warrant cases counsel may have been involved, that does not alter the conclusion that appointment of counsel is not compelled in all cases.

The cases cited by Glock do not compel relief on this issue.

To the contrary, Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998), reaffirms the principle that clemency decisions involve executive functions which are "rarely, if ever, appropriate subjects for judicial review." 523 U.S. at 276, quoting Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458, 464 (1981). In Woodard, the United States Supreme Court reversed a lower court's holding that Ohio's clemency process, which included a voluntary interview with the defendant, could violate due process. In so doing, the Court noted that due process is not violated "where, as here, the procedures in question do no more than confirm that the clemency and pardon power is committed, as is our tradition, to the authority of the executive." 523 U.S. at 276. Furthermore, although four of the justices opined in a concurring opinion that "some *minimal* procedural safeguards apply to clemency proceedings," 523 U.S. at 289 (O'Connor, J., concurring) [emphasis in original], the particular complaints alleged in Glock's motion do not suggest the arbitrariness required for judicial intervention described in the concurring opinion.

The existence of any statutory right to counsel discussed in Remeta v. State, 559 So. 2d 1132 (Fla. 1990), does not suggest that Glock's clemency proceedings violated any constitutional rights. See, State ex rel. Butterworth v. Kenny,

714 So. 2d 404 (Fla. 1998) (rejecting due process and equal protection arguments regarding restrictions on statutory right to counsel in postconviction proceedings). The Florida Supreme Court has approved the denial of counsel for successive clemency proceedings for capital defendants facing imminent execution. Provenzano, 739 So. 2d at 1155.

Glock in this proceeding attempts to continue to litigate (in the guise of incomplete clemency) the claim he raised in the federal evidentiary hearing when he argued that his trial counsel rendered ineffective assistance of counsel at the penalty phase for failing to present to the judge and jury information about his abusive childhood and that he suffered from post-traumatic stress disorder.

Glock's claim was rejected in a thorough and comprehensive order following a two day evidentiary hearing before the Magistrate-Judge whose recommendation was adopted by the United States District Judge and ultimately approved by a unanimous panel on the Eleventh Circuit Court of Appeals. That court explained that much of the evidence produced during the evidentiary hearing was cumulative to that presented to the trial court at penalty phase. Glock v. Moore, 195 F.3d at 635.

Regarding the alleged posttraumatic stress disorder, the

Court of Appeals opined:

> Finally, the state would have had access to conflicting psychiatric expert testimony that would have counteracted testimony from Dr. Larson concerning Glock's posttraumatic stress disorder. During the evidentiary hearing, the state called Dr. Sidney Merin, who testified that his review of the record indicated that there was no evidence to support petitioner's post-traumatic stress disorder claim. During the penalty phase, the state would have had the further advantage of subjecting petitioner to examination by its own expert psychologist, see Fla. R. Crim. P. 3.202 (d)(1996 & Supp. 1999), making it even more likely that the court would find the state psychologist to be a credible witness. This would have diminished petitioner's psychological evidence even further.
>
> (Id. at 639)

Glock essentially now attempts to continue the campaign of repeating the representations of those close to him in this pleading with the affidavit of his wife Sheila Garrett and her daughter Martha Goggins regarding Glock's personal characteristics along with that of his sister Tammy Simpson (who testified at the penalty phase of his trial and again in support of his federal habeas petition at the evidentiary hearing) who has repeated the testimony regarding his abuse as a child and her continuing love for him. It is not essential for the state to address again Glock's attempt to have this tribunal reconsider the excerpts of testimony from the evidentiary hearing in the federal court which Glock now appends in his Appendix 22 and 23, since such material, as noted above, has

already been considered in the rejection of relief by the federal district and appellate courts (after this Court determined an evidentiary hearing was unnecessary). A further round of judicial review would be pointless, as well as being successive and abusive.

Finally, Glock argues that his minimal due process rights were violated by the governor's failing to address mitigation material which Glock presented during his postconviction litigation. What this argument amounts to is a subtle suggestion that the governor in clemency proceedings is required, as a federal court is required to do in analyzing a constitutional challenge to counsel's effectiveness, to evaluate both the evidence adduced at trial and the evidence adduced in collateral proceedings. The Governor's role is not so limited and circumscribed. See, Petitioner's Appendix 19, Unpublished Clemency Rules. The Governor is not just another court for the review of Glock's presentation of legal claims considered and rejected in federal court.

Notably the Eleventh Circuit Court of Appeals regarded his claim as so insubstantial that it found as to the evidence which is not cumulative ". . .even if petitioner had been able to present his new evidence to the sentencing court, there is no 'reasonable probability' that the court would have returned

anything other than a sentence of death [citation omitted]. Petitioner likely would have fared worse at trial if he had been able to pursue the strategy for which he now argues." Glock v. Moore, 195 F.3d at 640.

As indicated above, Glock is not entitled to yet another appointment of counsel at clemency. See Bundy v. State, 497 So. 2d 1209, 1211 (Fla. 1986)(. . . the governor and cabinet held an earlier clemency hearing in relationship to appellant's conviction for the Tallahassee murders and found no basis in which to grant him relief. We cannot see that the executive branch was required to go through the motions of holding a second proceeding when it could well have properly determined in the first that appellant was not and never would be a likely candidate for executive clemency); Provenzano v. State, 739 So. 2d 1150, 1155 (Fla. 1999)(Provenzano has already had a clemency hearing before Governor Martinez and the Clemency Board in 1987. Provenzano was represented by counsel at that hearing and the Clemency Board granted him no relief. The Court found no merit to Provenzano's request for counsel for a second clemency hearing). Clemency seems particularly inappropriate here, given the cruel, callous and unnecessary murder of Mrs. Ritchie.

Glock has failed to demonstrate any justification for this Court's intrusion into the executive clemency procedures and

decision applied in this case. This Court must deny relief on this issue.

Finally, Glock misperceives the responsibility in the denial of relief. Following the denial of clemency by the Governor's having signed his first death warrant in 1988, it was incumbent upon Glock to update his application and to furnish further information that he might deem relevant or appropriate for consideration. Glock cannot assert an unawareness by members of his family of the opportunity to provide information. He has attached affidavits of Sheila Garrett, Martha Goggans and Tammy Simpson (Appendices 15-17) that they were contacted in March, 2000 by an investigator with the Governor's Office and told they could write or fax letters of support. Glock could have applied for further consideration by providing whatever additional updated information he deemed appropriate. See Rule 6A pertaining to Application Forms; Rule 6B permitting the application to include character references, letters of support, "and any other documents that are relevant to the application for clemency"; Rule 6C stating that it is the responsibility of the applicant "to keep the Office of Executive Clemency advised of any change in the information provided in the application". If Glock wanted additional consideration given to the mitigation materials he now submits - e.g. the transcripts of testimony

given at the federal evidentiary hearing and other documents - it was incumbent upon him to update his submissions.

ISSUE IV

WHETHER APPELLANT DEMONSTRATED REVERSIBLE ERROR IN THE TRIAL COURT RELATING TO HIS DEMANDS FOR PUBLIC RECORDS.

The warrant in the instant case was signed on November 14, 2000 and the execution was scheduled for December 8, 2000. However, pursuant to an order of this Court, the execution was stayed until January 10, 2001. On November 20, 2000, Glock made public records requests on the following persons or agencies:

1. Chief of Police, Palmetto Police Department
2. Director, Division of Elections, Department of State
3. Chief of Police, Fort Myers Police Department
4. Michael W. Moore, Secretary, Department of Corrections
5. Chief of Police, Dade City Police Department
6. Secretary, Department of Business and Professional Regulation.
7. Secretary, Department of Children and Families
8. Records Custodian, Pasco County Jail
9. Records Custodian, Pasco County Sheriff's Department
10. Records Custodian, Florida Department of Law Enforcement
11. Honorable Bernie McCabe, Office of the State Attorney, Sixth Judicial Circuit
12. Records Custodian, Office of the Medical Examiner, District Six
13. Honorable Wayne L. Cobb, Circuit Court Judge, Sixth Judicial Circuit

Subsequently, additional records requests were made to the following agencies:

1. Records Custodian, Pasco County Sheriff's Department
2. Secretary, Agency for Health Care Administration
3. Chief of Police, Lake Worth Police Department
4. Sheriff, Palm Beach County Sheriff's Department
5. Records Custodian, Florida Highway Patrol

6. Regional Administrator, Florida Parole Commission
7. Office of Executive Clemency

Glock's claims regarding public records disclosures and the constitutionality of the rules relating to postconviction proceedings for capital defendants are without merit.

A. Glock's Eleventh Hour Public Records Litigation And Constitutional Claims

Glock has waited until the signing of his second warrant in November, 2000 before filing his belated requests for records under Chapter 119 and Rule 3.852, long after the initial round of state and federal collateral litigation. Although, the defendant's public records requests demand public records under Chapter 119, the Florida Supreme Court has mandated that requests filed after a warrant has been signed fall under the purview of Rule 3.852. Rule 3.852(h)(3) provides:

> (h) Cases in Which Mandate was Issued Prior to Effective Date of Rule.
>
> * * *
>
> (3) Within 10 days of the signing of a defendant's death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel has previously requested public records. A person or agency shall copy, index, and deliver to the repository any public record:
>
> (A) that was not previously the subject of an objection;
>
> (B) that was received or produced since the previous request; or
>
> (C) that was, for any reason, not produced

previously.

> The person or agency providing the records shall bear the costs of copying, indexing, and delivering such records. If none of these circumstances exist, the person or agency shall file with the trial court and the parties an affidavit stating that no other records exist and that all public records have been produced previously. A person or agency shall comply with this subdivision within 10 days from the date of the written request or such shorter time period as is ordered by the court.

To the extent that Glock argues that *Florida Rule of Criminal Procedure* 3.852(h)(3) precluded him from making a request for public records until his death warrant was signed, the true facts are that that provision of Rule 3.852 did not take effect until October 1, 1998. *Amendments to Florida Rules of Criminal Procedure -- Rule 3.852 (Capital Postconviction Public Records Production) and Rule 3.993 (Related Forms)*, 723 So.2d 163 (Fla. 1998). It is disingenuous to suggest that, because of Rule 3.852, appellant could not have sought public records until his death warrant was signed. The record demonstrates that appellant was aware of the availability of public records "discovery" in 1988, and that he took advantage of Chapter 119 at that time. (HT 11). No provision of Florida law limited or foreclosed any opportunity to appellant, and he should not be heard to complain. Whatever the effect of Rule 3.852(h)(3) was, it did not prevent appellant from seeking public records in a timely fashion.

On July 1, 1999, this Court adopted Rule 3.852, and expressly stated that the rule was amended in light of the enactment of Section 119.19 during the 1998 legislative session. That statutory provision provides as follows with respect to public records demands after a death warrant is issued:

> (e) If, on the date that this statute becomes effective, the defendant has had a Rule 3.850 motion denied and no Rule 3.850 motion is pending, no additional requests shall be made by capital collateral regional counsel or contracted private counsel until a death warrant is signed by the Governor and an execution is scheduled. Within 10 days of the signing of the death warrant, capital collateral regional counsel or contracted private counsel **may request of a person or agency that the defendant has previously requested** to produce records any records previously requested to which no objection was raised or sustained, but which the agency has received or produced since the previous request or which for any reason the agency has in its possession and did not produce within 10 days of the receipt of the previous notice or such shorter time period ordered by the court to comply with the time for the scheduled execution. The person or agency shall produce the record or shall file in the trial court an affidavit stating that it does not have the requested record or that the record has been produced previously.

§ 119.19(8)(e), *Fla. Stat.* (1998) [emphasis added]. As the emphasized portion of the statute expressly states, a defendant may not initiate first-time record requests after a death warrant is issued. Instead, such "under warrant" requests are expressly limited to agencies from which the inmate has **previously** requested public records. Rule 3.852(a)(2) expressly

provides that "this rule shall not be a basis for renewing requests that have been initiated previously . . . ."

In Sims v. State, 753 So.2d 66 (Fla. 2000), this Court affirmed the trial court's denial of a motion to compel. Sims' counsel mailed letters to twenty-three agencies requesting public records. The Court agreed with the state's argument that the requests for production of public records were overbroad, vague and that Sims failed to demonstrate he had previously requested public records from the agencies, under Rule 3.852(h)(3). The Sims Court explained:

> "However, it is equally clear that this discovery tool is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for post conviction relief. . .
>
> * * *
>
> To hold otherwise would foster a procedure in which defendants make only a partial public records request during the initial post conviction proceedings and hold in abeyance other requests until such time as a warrant is signed. Such is neither the spirit nor intent of the public records law. Rule 3.852 is not intended for use by defendants as in the words of the trial court, "nothing more than an eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate area of inquiry."
>
> (Id. at 70)

The concurring opinion of Justice Anstead, in which Justice Shaw concurred, observed that the Court's opinion "stands for the proposition that there should be an orderly scheme for discovery in postconviction proceedings that facilitates early

disclosure and discourages the filing of broad, open ended discovery requests only *after* a death warrant has been executed." Justice Anstead went on to note however, that access to public records is guaranteed by the Florida Constitution regardless of whether that access is sought by a death row inmate, a disinterested citizen or a member of the media." Sims, 753 So.2d at 71.

Glock asserts that he has a constitutional right to inspect public records pursuant to Article I, Section 24 of the Florida Constitution. Whereas appellant may indeed have such a right–as all parties recognize–this Court promulgated Rule 3.852 to regulate discovery on behalf of capital postconviction defendants for public records under Chapter 119 relating to proceedings for relief pursuant to Florida Rule of Criminal Procedure 3.850 and 3.851. The trial court in this case stated:

> Ms. Brewer, you're asking for them under unusual circumstances and with unusual timetables. You would be entitled to them otherwise, perhaps. But under this circumstance, I find you're not.

(HT 58-59).

When this Court first embarked upon public records limitations

on postconviction proceedings, it stated the following:

> **We specifically address the comments of those who are concerned that the rule will unconstitutionally limit a capital postconviction defendant's right to**

> **production of public records pursuant to article I, section 24, Florida Constitution, and chapter 119, Florida Statutes (1995). We conclude that the rule does not invade those constitutional and statutory rights.**
>
> This rule is a carefully tailored discovery rule for public records production ancillary to rule 3.850 and 3.851 proceedings. The time requirements and waiver provisions of the rule pertain only to documents which are sought for use in these proceedings. The rule does not affect, expand, or limit the production of public records for any other purposes other than use in a 3.850 or 3.851 proceeding. This is a rule of procedure which directs the use of the courts' power to require, regulate, or prohibit the production of public records for these postconviction capital proceedings...

In Re Amendment To Fla. Rules of Crim, 683 So. 2d 475, 476 (Fla. 1996)[emphasis added]. Thus, this Court has already considered and rejected the argument against constitutionality of reasonable limitations upon a capital postconviction defendant's demands for records for use in a postconviction proceeding.

It is well established that the eleventh hour initiation of public records requests of the type pursued by appellant in this case provides no basis for relief. Addressing a claim that the trial court did not deny Bryan's right to public records under section 119.19, this Court stated:

> As to Bryan's first issue, we hold that the trial court did not abuse its discretion in deciding that Bryan's right to public records was not denied under section 119.19, Florida Statutes (Supp. 1998), and Florida Rule of Criminal Procedure 3.852(h)(3). The trial court found that Bryan simply filed a "plethora of demands ...to nearly every public agency that had any contact" with him, and that he failed to identify

> any specific concerns or issues to the trial court that would warrant relief. The trial court therefore found Bryan's requests to be "at best a 'fishing expedition' and at worst a dilatory tactic." The trial court further noted that Bryan has "not shown good cause why these new public records requests were not made until after the death warrant was signed." See Buenoano v. State, 708 So.2d 941, 947 (Fla.)("[Public records requests] shall not serve as a basis for a stay of execution unless Buenoano makes a showing that the documents sought contain newly discovered evidence likely to entitle her to relief."), cert. denied, 523 U.S. 1043, 118 S.Ct. 1358, 140 L.Ed.2d 507 (1998). Thus, the trial court properly denied relief.

Bryan v. State, 748 So. 2d 1003 (Fla. 1999)

Sims, Bryan, Buenoano and Remeta expressly hold that a capital defendant's "eleventh hour" initiation of the public records process and/or litigation does not provide a basis for stay of execution or substantive relief. Buenoano, 708 So.2d at 952-3 ("The Public Records Act has been available to Buenoano since her conviction; but most of the records she alleges were not disclosed prior to the filing of her latest rule 3.850 motion were not requested until January 1998, or later. . . . Buenoano has not alleged that through the exercise of due diligence she could not have made these requests within the time limits of rule 3.850."); Remeta v. State, 710 So.2d 543, 546-8 (Fla. 1998) ("The public records materials could have been obtained and investigated many years ago; instead, Remeta waited until the 'eleventh hour' to attempt to investigate the issues

raised in this claim). Glock has provided no basis for why the information he now seeks to investigate could not have been obtained earlier by the exercise of due diligence. Moreover, he has not established that a single request below that was *reasonably calculated* to lead to admissible evidence in this successive post-conviction proceeding was denied.

As the Assistant State Attorney noted below:

> ...So before we get into the issue of the Court trying to determine all these exemptions, most of the agencies have either complied or filed objections, and I think the burden should be on the defense at this point to articulate specifically what the relevance is of these records to some colorable issue in a 3.850 proceeding, and why they need them, rather than have every agency occupy the Court's time in reviewing exemptions that have no pertinence.
>
> These we're talking about seventeen years after the case, twelve years after the 3.850, and you're only entitled to updates of public records that you've already requested unless you can establish relevance. So I think before we get into that exhaustive procedure, the burden should be on Mr. Glock's attorneys to identify, "We need these records and this is why," then have that agency respond.

(HT 9-10).

The trial court was simply unimpressed with appellant's public records requests in this case. The trial court charitably stated that Glock was not merely on a fishing expedition, but out to snag "a pot of gold" and more than "fishing," it was "dreaming or hoping with no basis –- no reasonable basis." (HT 121). Indeed, a less charitable

characterization is clearly supported by this record, that Glock was not even fishing on water, but on land, and it was simply an attempt to overwhelm a number of state agencies and buy additional time for Mr. Glock.[3] Glock has demonstrated neither a constitutional deficiency in the rules for postconviction proceedings, nor prejudice. Glock has simply failed to show that he was denied any material records for the purpose of pursuing a successive motion for postconviction relief.

B. Specific Allegations Concerning Records

(I) State Attorney's Office

Glock complains that the trial court failed to review and release the claimed exempt material submitted by the State Attorney's Office. Appellant's Brief at 64. By way of background, the State notes that the State Attorney's Office complied with Glock's public records requests in 1988, turning over more than 3,000 pages of documents. (Plaintiff's Index Of

[3]Glock's demands of the Fort Myers Police Department provide an example of just how abusive these requests were. The Department's sole involvement in this case was the investigation of two still unsolved burglaries in which the murder weapon was taken. (Plaintiff's Response to Motion to Compel at 10-11). Despite the fact that Glock and Puiatti were apprehended in the victim's car with the murder weapon and provided full confessions, Glock requested the personnel files of any officers who investigated the unsolved burglaries. Glock did not, and cannot show the relevancy of such a broad request under the facts of this case. Nonetheless, the Department complied with Glock's demands for records.

Public Records Demands And Responses, TAB 14B)[hereinafter Index]. The State Attorney's Office objected to the vague, overbroad , and impermissibly successive nature of Glock's latest request, but, nonetheless, generally complied with the request. Id. The Response noted that the request made no attempt to distinguish between previously requested records and those records requested for the first time. And, the state noted that any additional requests did not specify the relevance of any requested documents. To the contrary, the request seemed designed not to lead to any material of any relevance, as noted in the State Attorney's Response:

> Moreover, the request seeks numerous items not previously requested including agency policies concerning records evidence maintenance and destruction, organizational charts for the State Attorney's Office, and investigator and attorney travel records all of which appear completely irrelevant to any potential issue in the instant proceedings. The records also make a new request for records relating to a Ronnie Lee Stroud. The State Attorney's Office has located no records relating to the latter individual.

(Index, TAB 14B).

The Assistant State Attorney below noted how truly abusive Glock's requests have been and that they are not related to any possible claim for postconviction relief.[4] (HT 73-75). As for

[4]The Assistant State Attorney stated:

...The other thing that is a primary point of

possible Brady material, Mr. Crow stated, below: "Judge, I am aware that Brady applies whether something is public record or not public, and we do not believe there is anything of that character in there." (HT 77). And, the State attorney properly refused to turn over attorney work product. See State v. Kokal, 562 So.2d 324, 327 (Fla. 1990).

As for the NCIC and FCIC history, Glock simply claims that the trial court erred in finding these records exempt. (Appellant's Brief at 66). He did not below or now on appeal even attempt to show the relevance of this background information for any particular individual. And, as the Assistant State Attorney noted below:

> ...On the NCIC FCIC, I just want to clarify. I think the only other two – there was very – I mean, we're talking about just a couple of rap sheets that were in

---

> contention, I believe, is they made a request that's never been made before, and it wasn't made for records relating to this case for the Glock and Puiatti prosecutions. But they made a very broad omnibus request for any record pertaining in any way to anybody who was a witness or a suspect in any case in which Glock, Puiatti, or the victim was arrested or a suspect or prosecuted, I think was the language of it.
>
> Now, what that means is, is that you've got a whole – anybody who is a witness, who has ever been a witness in another case, any police officer who has testified in another case. They could give me no specification. Clearly, this is over broad. It's abusive. It's harrassive. It's not related to the case, and it's nothing more than a fishing expedition at this stage..., (HT 73-74).

> there. And I think the stuff that was exempted, there was no record on the people that we tried to find. But that's in there.
>
> And if they have some specific, again, person that they want information on, even if we object we'll try to accommodate them. But they need to narrow whatever they're looking for, for us to be able to comply more than we have.

(HT 77-78). Despite the Assistant State Attorney's invitation, defense counsel did not attempt to specify which individuals they needed the information on or explain to the trial court why such material was relevant. (HT 78).

As for the PSI of Carl Puiatti, counsel below and now on appeal fails to specify how this document is even marginally relevant to these proceedings. Glock fails to identify any potential postconviction claim for which the confidential PSI of Mr. Puiatti would provide support. In any case, a clear statutory exemption applies to this document. Section 945.10(1)(b), Florida Statutes (2000). The trial court did not err in refusing to order its disclosure.

After hearing the argument of counsel, the trial court stated:

"I'm going to find all of your exemptions are justified. And the attorneys' notes are not public records. They might be discoverable under some unusual constitutional basis, but I don't find any in this case." (HT 77). The trial court did not err, under the circumstances of this case, in finding the State

Attorney's exemptions were justified.[5]

(II) Pasco County Sheriff's Office

Glock summarily claims that the Pasco County Sheriff's Office's response to his public records requests was inadequate. (Appellant's Brief at 68). He complains that the Sheriff's Office delivered a "ten pound" box of additional records at the December 7th hearing to gain an "unfair" advantage over Mr. Glock. Id. This unsupported allegation hardly warrants a response. The State doubts that the Sheriff's Office spent much time contemplating how it could gain an advantage over Mr. Glock. The State notes that the Pasco County Sheriff's Office generally complied with Glock's public records requests even though the numerous personnel files of various officers could have little if any relevance to any issue in a successive motion for postconviction relief. It must be remembered that Glock and Puiatti provided multiple confessions to the victim's murder and were apprehended in New Jersey in the murder victim's car with the murder weapon.

Mr. Randall, counsel for the Pasco County Sheriff's Office explained that the Sheriff's Office expedited its response in this case. Mr. Randall stated:

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[5]This Court could of course, examine the exempt materials to determine the propriety of the trial court's ruling.

> ...With regard to the personnel files, Judge, we asked them –- and I appreciate both Ms. Brewer and Ms. Backhus's cooperation. I mean, we're actually getting along, for a change, on one of these.
>
> They did prioritize the three of the ten files that they asked for. And they received those files on November 24th. We took the position in our filing with the Court, that that constituted an oral amendment in the reason of their original request.
>
> We did that. Because as we indicated to them, effectively we have five working days to provide these records, and there was no way we could provide all ten files that quickly. We do have the other seven files photocopied now, and I am prepared to turn them over to them after the hearing and will do a subsequent filing with the Secretary of State.

(HT 66-67). If defense counsel had any concerns about "gamesmanship" of the Pasco County Sheriff's Office, she should have raised those concerns at the hearing below to allow Mr. Randall a chance to respond.

As for claims regarding a missing videotape of the crime scene or New Jersey records, Glock's argument on appeal is misleading. Glock maintains that a videotape was made at the crime scene and that additional records from New Jersey apparently exist but were not turned over. (Appellant's Brief at 67-68). However, at the December 7th hearing, Mr. Randall represented that a diligent search revealed no crime scene videotape and he believed that it was not normal practice in 1983 to have made such a tape. (HT 62). Moreover, such a tape was never listed in the evidence section and, if such a video existed, it would have been used at trial. Id. More

significant, after the hearing, the Sheriff's Office filed a response on this issue which included affidavits positively establishing that no such tape existed. (Exhibit 2). Defense counsel was served a copy of that response by mail on December 14, 2000.

Appellant has not shown that any relevant records were not turned over by the Pasco County Sheriff's Office.

(III) Department of Corrections Records

Glock contends that he was denied the right to review his own DOC medical records. (Appellant's Brief at 69-70). The transcript of the hearing below, refutes this suggestion.[6] It is evident that defense counsel reviewed part of his medical records and the Department lodged no objection to turning over Glock's records. Counsel for the Department of Corrections stated: "The Department of Corrections' contention with regard to mental health records is that it provided its entire medical file. All the findings of its physicians, all the findings of its mental health professionals have been provided, and the MMPI information it is believed was provided as well." (HT 24). The only records held back were the questions on the MMPI because

[6] The Department objected to turning over Mr. Puiatti's records without an order from the court. (HT 21). However, the court entered such an order and the Department turned over the records. (HT 22, 31).

releasing the questions reduces the effectiveness of the standardized test. (HT 25). It would be the equivalent of handing out the SAT exam test questions and it also infringes upon the copyright. (HT 25). The trial court agreed that Mr. Glock failed to show any need for the MMPI booklet or notes relating to administration of the test. (HT 27)

The record reveals that the Department of Corrections was quite generous in providing records, including the complete personnel files of nine individuals employed by the Department of Corrections. Such records initially were objected to as they "were not reasonably calculated to lead to discovery of admissible evidence." Nonetheless, "in an abundance of caution" such personnel records were turned over to the defense. (HT 23).

Glock has not shown the trial court erred in addressing his public records requests of the Department of Corrections.

(IV) Florida Department of Law Enforcement

While Glock maintains the lower court impermissibly held he was only entitled to an update from an agency he had previously requested records from, his brief fails to mention any specific relevant information he believes FDLE possesses but was not turned over. While defense counsel claims that FDLE has relevant information about this case, such as ballistics testing

and serology testing (Appellant's Brief at 73), defense counsel below acknowledged that FDLE had complied with her request and forwarded such material to the repository. (HT 13). And, in fact, the response filed by FDLE indicated that such relevant material was in fact submitted to the repository. (Index at 7B).

Appellant has not shown any relevant, material information in possession of the FDLE was not turned over.

(V) Palmetto Police Department, Lake Worth Police Department, State Division of Elections, Agency For Health Care Administration

Glock summarily claims that various records were shown to be relevant but were not turned over. Glock's failure to adequately brief these claims should operate to waive these issues on appeal. See Duest v. Dugger, 555 So. 2d 849, 851-852 (Fla. 1990)("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived."); Polyglycoat Corp. v. Hirsch Distributors, Inc., 442 So. 2d 958, 960 (Fla. 4th DCA 1983)("It is the duty of counsel to prepare appellate briefs so as to acquaint the Court with the material facts, the points of law involved, and the

legal arguments supporting the position of the respective parties.") Glock has failed in his burden to demonstrate reversible error before this Court. Nonetheless, the state feels compelled to address some potentially misleading allegations contained in Glock's brief.

While Glock notes that the lower court found Palmetto Police Department records irrelevant, it was established below that Palmetto largely complied with the public records requests. (Index at 16A). Nor did counsel argue how, under the facts of this case, the polygraph results of another person, if they even existed, were remotely relevant to any possible postconviction claim.

With regard to the Lake Worth Police Department, an affidavit was filed showing that after a diligent search, the records requested of the department did not exist. (Index at 10B, Response to Motion to Compel at 11). In fact, defense counsel was made aware of this fact at the hearing below by an Assistant Attorney General. (HT 43). Glock conspicuously fails to mention this fact in his brief. The record demonstrates that Lake Worth has fully complied with Glock's request for records.

While the trial court found the records relating to the Palm Beach County Sheriff's Office irrelevant, Glock fails to mention that the Department fully complied with his public records

request. (Index at 15B). The State represented that the requested records that were found were forwarded to the repository. (HT 45).

C. Allegation of Gamesmanship, Late Disclosure of Records, And Denial Of Glock's Motion To Amend

Glock repeatedly asserts that he was denied the opportunity to amend his motion for postconviction relief by the trial court. Appellant's allegation is contradicted by the record. When Ms. Backhus first asked for permission to amend Glock's postconviction motion, the trial court did not deny the request, but reserved ruling: "I am going to reserve that until you make your argument and see if there is any justification for it." (HT 81). And, at the conclusion of the hearing, the trial court did not, as appellant apparently contends, foreclose the possibility of an amended motion. The trial court clearly left open the question of an amended motion, stating that if counsel had good grounds, he would consider the amendment. The trial court stated: "...and I'm going to deny your motion to amend. However, if you have some reasonable basis to amend, you can always bring that back in. I will certainly consider that. Justice will require that you be allowed to amend. I am not, at this time, going to give any blanket order to allow you to amend." (HT 121). Glock simply failed below to provide any

good reason for amending his motion and does not offer such a reason on appeal.

Contrary to Glock's assertions on appeal regarding gamesmanship, the record reflects that the agencies involved bent over backward to accommodate his broad and in the state's view, abusive requests for public records. See e.g. Index; Plaintiff's Response to Motion to Compel; December 7, 2000 Hearing Transcript. Glock simply embarked upon a wide ranging fishing expedition which, given the facts of this case, provided little if any prospect of obtaining relevant material for inclusion in a successive postconviction motion. Glock has not demonstrated reversible error in the trial court regarding his public records demands.

CONCLUSION

This Court should affirm the trial court's denial of relief. Glock's motion is successive and the claims are both barred and meritless. Additionally, Glock is not entitled to a stay of execution. See Buenoano v. State, 708 So.2d 941, 951 (Fla. 1998), citing Bowersox v. Williams, 517 U.S. 345, 134 L.Ed.2d 494 (1996)(recognizing that stay of execution on second or third petition for post conviction relief is warranted only where there are substantial grounds upon which relief might be granted); Barefoot v. Estelle, 463 U.S. 800, 77 L.Ed.2d 1090 (1963)(same).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery/Federal Express to Terri L. Backhus, Backhus and Izakowitz, P.A., 303 South Westland Avenue, Tampa, Florida 33606, this _____ day of December, 2000.

_____

COUNSEL FOR APPELLEE

CERTIFICATE OF TYPE SIZE AND STYLE

This brief is presented in 12 point Courier New, a font that is not proportionately spaced.

_____

COUNSEL FOR APPELLEE

IN THE SUPREME COURT OF FLORIDA

ROBERT DEWEY GLOCK, II,

Appellant, **CASE NO. SC65380**

v.

STATE OF FLORIDA, **CAPITAL CASE**

Appellee **DEATH WARRANT SIGNED**
EXECUTION SET January 11, 2000

_____/

INDEX TO EXHIBIT

Exhibit 1 Excerpted Transcript of Proceedings:

The Florida Cabinet, Sitting as The Clemency Board of the State of Florida, December 3, 1987

Exhibit 2 Response and Affidavits of Pasco County Sheriff's Office dated December 14, 2000