IN THE SUPREME COURT OF FLORIDA

JAMES GUZMAN,
Petitioner,

v. **CASE NO. SC02-2131**

STATE OF FLORIDA,
Respondent.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Respondent, and responds as follows to Guzman's October 1, 2002, petition for writ of habeas corpus. For the reasons set out below, the petition states no grounds for relief, and should be denied in all respects.

RESPONSE TO REQUEST FOR ORAL ARGUMENT

Guzman's request for oral argument should be denied. The issue contained in the petition is not complex, has been fully briefed and argued to the Court in other cases, and its resolution will not be enhanced by oral argument.

RESPONSE TO PROCEDURAL HISTORY

The procedural history set out on pages 2-3 of the petition is accurate, but highly abbreviated. The Respondent relies on the following:

> On January 7, 1992, James Guzman was indicted for the murder and armed robbery of David Colvin. Following a jury trial, Guzman was convicted as charged and sentenced to death. This Court subsequently reversed Guzman's convictions and death sentence and remanded for a new trial, holding that Guzman's right to a fair

trial was violated because his public defender had a conflict of interest. *Guzman v. State*, 644 So. 2d 996 (Fla. 1994). Guzman was retried and again convicted and sentenced to death. We now address Guzman's appeal from the second trial. We have jurisdiction. Art. V,§ 3(b)(1), *Fla. Const*. We affirm the convictions and death sentence.

FACTS

The record of Guzman's second trial reflects the following facts. David Colvin's body was discovered lying face down on the bed of his motel room on August 12, 1991. He had nineteen stab, incised, and hack wounds to his face, skull, back, and chest, and a defensive wound to a finger on his left hand. A skull fragment was found on the floor at the foot of the bed. Colvin's bed was soaked in blood and a large amount of blood spatter coated the walls of the room within two to three feet of the body. A bent and twisted samurai sword was found on a light fixture above the bed. No blood or fingerprints were found on the sword. However, Guzman's fingerprints were found on the telephone in the room. Colvin's blood alcohol level was determined to be .34 at the time of his death.

Dr. Terrance Steiner, the interim medical examiner for Volusia County, viewed the murder scene. Dr. Steiner testified that the weapon used to kill Colvin was a single-edged knife or knife-like object with a slightly curved, heavy blade. He stated that the incised wounds to Colvin's face and skull were consistent with a blade being drawn over an area rather than stabbed into it. Dr. Steiner testified that the defensive wound was the type suffered by a person attempting to block a blow with his hand. He further testified that the sword recovered from the room could have inflicted some of the wounds to Colvin's body, and that a survival knife like the one owned by Guzman could have inflicted other wounds. Dr. Steiner said that Colvin died as a result of loss of blood and that none of his wounds would have been immediately fatal. Based on the pattern of the wounds and the defensive wound, Dr. Steiner opined that

Colvin was conscious during at least the onset of the attack. Dr. Steiner said that the fact that Colvin was intoxicated at the time of the attack did not affect his opinion that Colvin was conscious during the assault and attempting to defend himself. Dr. Steiner estimated that Colvin died between 3 p.m. and midnight on August 10.

Leroy Parker, a crime scene analyst with the Florida Department of Law Enforcement (FDLE), testified that the blood stains found in the room indicated that most of Colvin's wounds were inflicted while he was lying on the bed in a defensive position with his head elevated within a distance of twelve inches from the bed. Parker further testified that the large amount of blood spatter on the walls of the room suggested that the killer was swinging the weapon. Parker stated that the sword found at the crime scene was consistent with the blood spatter evidence.

Approximately one week prior to the murder, Guzman and Martha Cronin, a prostitute and crack cocaine addict, began living together at the Imperial Motor Lodge. Colvin also resided at the motel, and Guzman and Colvin became acquainted. On the morning of August 10, Colvin and Guzman left the hotel in Colvin's car. Guzman and Colvin first proceeded to a tavern and drank beer, then the men went to the International House of Pancakes and ate breakfast. Guzman testified that he and Colvin returned to the motel at approximately 12 noon. Guzman stated that he gave Colvin's car and room keys back to Colvin and returned to his room. Guzman testified that at approximately 3 p.m. Curtis Wallace gave him a diamond ring that he could sell or trade for drugs. Guzman admitted that he gave the ring to Leroy Gadson in exchange for drugs and money. However, Guzman denied any involvement in Colvin's robbery and murder.

Cronin's trial testimony contradicted Guzman's. Cronin testified that Guzman told her prior to the murder that Colvin would be easy to rob because he was always drunk and usually had money. Cronin stated that Guzman told her in another conversation that if he ever robbed anybody, he "would have to kill them" because "a dead witness can't talk." Cronin testified that

Guzman was holding his survival knife at the time this statement was made. Cronin claimed that, on the morning of August 10, Guzman told her that he was going to drive Colvin to the bank. Cronin stated that Guzman returned to their room that morning and showed her Colvin's car keys and room keys. Cronin testified that at approximately 3 p.m. Guzman appeared at their room with a garbage bag that contained rags. Cronin said that Guzman looked upset, and that she asked him what was wrong. Cronin testified that Guzman responded, "I did it," and confessed to murdering Colvin. Cronin stated that Guzman told her that Colvin awakened while he was taking money from Colvin's room. Cronin testified that Guzman said that he hit Colvin in the head and then stabbed him with the samurai sword. Cronin stated that Guzman showed her a diamond ring and money that he had taken from Colvin. Cronin also stated that Guzman said he committed the murder for her.

Upon questioning by the police shortly after the discovery of Colvin's body, Guzman and Cronin both claimed to know nothing about the murder. In the latter part of November 1991, Cronin informed the police that Guzman had confessed to her that he killed Colvin. Cronin testified that Guzman had instructed her to tell the police that she knew nothing about the murder. Cronin also testified that she did not come forward earlier because Guzman threatened to harm her if she revealed what she knew about the crime. Guzman admitted that he told Cronin prior to his first trial to "do the right thing girl -- it's a small world." Paul Rogers and Guzman became friends while sharing a jail cell in the Spring of 1992. Rogers testified that Guzman confessed to him that he robbed and killed Colvin. Rogers said that Guzman told him that he used Colvin's key to enter his room after the men returned from drinking, and that Colvin awakened while Guzman was robbing him. Rogers further testified that Guzman stated that, after Colvin sat up in the bed, Guzman struck Colvin ten or eleven times with the sword. Rogers stated that Guzman said he cleaned the sword and put "everything" in a garbage bag which he disposed of in a dumpster. Rogers also stated that Guzman admitted that he took Colvin's ring and some money and traded the ring for drugs. Guzman allegedly

told Rogers that he robbed and killed Colvin so Cronin would not have to earn money as a prostitute. Rogers said that Guzman threatened to kill him and his family if he informed the police about his knowledge of the murder.

Guzman was arrested for Colvin's murder on December 13, 1991. He had a survival knife in his possession at the time of his arrest. The police subsequently recovered Colvin's ring. Guzman's second trial began on December 2, 1996. **In this trial, Guzman waived his right to a jury in both the guilt and penalty phases of the trial**. (FN1) The trial court convicted Guzman of first-degree murder and armed robbery and imposed a death sentence. In its sentencing order, the trial court found the following five aggravating circumstances: (1) Guzman was previously convicted of a felony involving the use of violence; (2) the murder was committed in the course of a robbery; (3) the murder was committed for the purpose of avoiding arrest; (4) the murder was committed in a cold, calculated, and premeditated manner (CCP); and (5) the murder was especially heinous, atrocious, or cruel (HAC). The trial court found no statutory mitigating circumstances. As nonstatutory mitigation, the court found that Guzman's alcohol and drug dependency was established, but was entitled to little weight.

Guzman now appeals his convictions and death sentence. Guzman raises eight issues on appeal to this Court. (FN2) Three of Guzman's claims are without merit and do not warrant discussion. (FN3) Of the claims that merit discussion, one relates to the guilt phase of Guzman's trial and four pertain to the penalty phase.

> (FN1.) **The waiver was at the instance of Guzman himself and was contrary to the advice of his counsel. The record reveals that Guzman's waiver was knowing, voluntary, and intelligent. Questions were asked of Guzman in open court by both the trial judge and Guzman's counsel. Guzman also signed a written waiver of his right to a jury trial.**
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> (FN2.) Guzman contends that the trial judge

> erred by: (1) improperly denying his motion for mistrial; (2) convicting him in the absence of substantial and competent evidence of guilt; (3) failing to dismiss the case due to double jeopardy; (4) improperly ruling on "various issues"; (5) imposing a disproportionate death sentence; (6) improperly finding the "heinous, atrocious, or cruel" aggravating circumstance; (7) improperly finding the "avoiding arrest" aggravating circumstance; and (8) improperly finding the "cold, calculated and premeditated" aggravating circumstance.
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> (FN3.) Issues one, three, and four are without merit.

Guzman v. State, 721 So. 2d 1155, 1156-59 (Fla. 1998) [emphasis added].

RESPONSE TO JURISDICTIONAL STATEMENT

The Respondent does not dispute the jurisdiction of this Court to entertain a petition for a writ of habeas corpus. However, the grounds for relief contained in Guzman's petition do not supply a basis for relief from Guzman's lawfully-imposed sentence of death.

RESPONSE TO GROUNDS FOR RELIEF

I. THE "INVALID JURY TRIAL WAIVER" CLAIM

On pages 5-14 of the petition, Guzman argues that he is entitled to relief under *Ring v. Arizona* even though he knowingly, voluntarily, and intelligently **waived** his right to a jury trial. In light of this Court's decisions in *Bottoson v.*

Moore 27 Fla. L. Weekly S891 (Fla. Oct. 24, 2002), *cert. denied*, 2002 WL 31740419 (Dec. 2, 2002) and *King v. Moore*, 27 Fla. L. Weekly S906 (Fla. Oct. 24, 2002), *cert. denied*, 2002 WL 31686720 (Dec. 2, 2002), wherein this Court held that *Ring* had no effect on Florida capital sentencing, this claim has no legal basis. In any event, on direct appeal, this Court expressly addressed the propriety of Guzman's waiver of a jury trial, and, despite the histrionics of Guzman's petition, the fact remains that he knowingly, voluntarily, and intelligently waived a jury trial, perhaps believing that his best chance lay with the judge. The fact that Guzman's choice did not turn out as he had hoped does not in some way enable him to come within the reach of *Ring v. Arizona.*[1]

Despite Guzman's attempts to fabricate a basis upon which this Court should reconsider the validity of his waiver of a jury, the fact remains that Guzman knowingly, voluntarily, and intelligently chose to waive a jury trial **against the advice of his attorney.** *See, Guzman v. State,* 721 So. 2d at 1158. Because those are the true facts, it stands reason on its head to suggest that Guzman's own choice should provide a basis for

[1] While Guzman labels his claim as a *Ring* claim, it is really an *Apprendi* claim -- *Ring* merely applied the rationale of *Apprendi* to the particular circumstances of the Arizona capital sentencing statute.

reversal.

To the extent that further discussion of the *Apprendi/Ring* issue is necessary, if the law were as Guzman would have it, virtually every defendant who waived a jury trial would automatically be entitled to reversal and retrial, regardless of whether the defendant was under a sentence of death or not. *Apprendi* is not retroactively applicable, and certainly cannot be reasonably made retroactive to cases in which the defendant validly **waived** a jury trial. *See, Hughes v. State,* 826 So. 2d 1070 (1st DCA 2002) (Holding that *Apprendi* is not retroactively applicable to cases which became final before *Apprendi* was decided). *Apprendi* has universally been held non-retroactive by the State and Federal Courts to consider the issue, and it makes no sense to suggest, as Guzman does, that the *Apprendi* claim is retroactively available to a defendant who affirmatively waived **any** participation by a jury.

In addition to being meritless (and very nearly frivolous), this claim is procedurally barred because it could have been but was not raised on direct appeal from Guzman's conviction and sentence. Despite the hyperbole of his brief, the claim Guzman presses has been around since the time of *Proffitt v. Florida*. The complaints contained in the petition directed to the

constitutionality of the Florida death penalty act have been litigated repeatedly over the years, and it is disingenuous to suggest that this claim has only recently sprung into existence. The scope rights Guzman sought to waive was extensively explained to him, and there is no rational basis to assert that he did not fully understand what he was doing.[2] Trial Record at 1217. There is no basis for relief.[3]

To the extent that further discussion of this frivolous issue is necessary, *Apprendi/Ring* does not provide a basis for relief in this case because the rule of law set out in those cases is inapplicable to the facts of Guzman's case. Two of the three aggravators found and upheld in this case -- the prior violent felony aggravator and the during the course of a robbery aggravator -- are outside the reach of the *Apprendi/Ring* decisions. Because that is so, those decisions do not affect

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[2]Guzman's claim, on page 7 of the petition, that he has "always had a right to a jury determination of each and every aggravator" is wholly irreconcilable with his claim for relief. If he has always had that right, as he claims, then he should have raised the issue on direct appeal. He did not, and, under any view of the law, is procedurally barred from pursuing it now.

[3]The issue contained in Guzman's petition approaches the green-shirted juror described by Justice Scalia in *McKoy v. North Carolina,* 494 U.S. 433 (1990). The most that can be said for Guzman's claim is that there is little to be said against it. That fact does not, however, entitle him to relief.

this case because there can be no error as a matter of law.

Under the plain language of *Apprendi*, a prior violent felony conviction is a fact which may be a basis to impose a sentence **higher than that authorized by the jury's verdict** without the need for additional jury findings.[4] There is no constitutional violation (nor can there be) because the prior conviction constitutes a jury finding which the judge may rely upon, without additional jury findings, in imposing sentence. *See Almendarez-Torrez v. United States*, 523 U.S. 224 (1998); *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Under any view of the law, and even after *Ring*, the jury is not required to make a determination of the prior violent felony aggravator, and that aggravating circumstance can be found by the judge alone. Under any interpretation of the facts, the prior violent felony conviction and the "during the commission of a felony" aggravating circumstance obviate any possible Sixth Amendment error -- there is no basis for any relief. These two aggravating

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[4] Of course, under Florida law, death is the maximum possible sentence for the crime of first degree murder, and that is the defendant's sentence exposure upon conviction. *Mills v. Moore,* 786 So. 2d 532, 537-38, (Fla. 2001). The "higher than authorized by the jury" component of *Apprendi* is not applicable to the capital sentencing process in Florida, but that distinction does not affect the basic premise that a prior felony conviction is a fact that has **already** been found by a jury beyond a reasonable doubt, and does not need to be (and as a policy matter should not be) "re-proven."

circumstances are outside of the *Apprendi/Ring* holding,[5] and, because that is so, those decisions are of no help to Guzman. In the absence of any legal support, which cannot exist in the context of a bench trial, Guzman's claim collapses. *Apprendi* and *Ring* do not factor into the facts of this case, and no relief is justified.

II. GUZMAN'S CLAIM OF "INCOMPETENCE FOR EXECUTION" IS PREMATURE BECAUSE NO DEATH WARRANT HAS BEEN SIGNED.

On pages 43-44, Guzman argues that he "may be" incompetent for execution at some point in time in the future, and acknowledges that this claim is not ripe for review because no death warrant is pending at this time. Florida law, as Guzman concedes, is clear that the issue of sanity for execution is not properly raised until such time as the Governor has issued a death warrant. *Petition,* at 43. *Hunter v. State,* 817 So. 2d 786,

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[5] The *Apprendi* Court cited to *Jones v. United States,* 526 U.S. 227, 243 n.6 (1999), for the proposition that under the Fifth and Sixth Amendments, "any fact (**other than prior conviction**) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." *Apprendi v. New Jersey,* 530 U.S. 466, 476 (2000). [emphasis added]. This Court has already determined that death is the maximum penalty for first degree murder, so that component of the statement has no application to Florida law. In any event, Guzman's prior violent felony conviction, and the during the course of a robbery aggravator, are outside any possible (or reasonable) interpretation of *Apprendi* and *Ring.*

799 (Fla. 2002); *Brown v. Moore,* 800 So. 2d 223, 224 (Fla. 2001); *Mann v. Moore,* 794 So. 2d 595, 600 (Fla. 2001); *Hall v. Moore,* 792 So. 2d 447, 450 (Fla. 2001); *see also, Fla. R. Crim. P*. 3.811(c). This claim is not yet ripe for review.

CONCLUSION

WHEREFORE, based upon the foregoing arguments and authorities, the Respondent respectfully requests that all requested relief be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to **James L. Driscoll**, Jr., CCRC-Middle, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619, this ____ day of January, 2003.

Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

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