IN THE
SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL
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CLERK, SUPREME COURT

CASE NO. SC03-1680

LOWER TRIBUNAL F89-14998

RONNIE JOHNSON,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.
_____/

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, **RONNIE JOHNSON,** through counsel, respectfully requests this Court issue a Writ of Habeas Corpus based upon ineffective assistance of counsel on direct appeal, and in support thereof would state:

1. RONNIE JOHNSON was indicted for first-degree murder of Tequila Larkins a/k/a "Sugar Momma", in violation of Florida Statute Section 782.04 (Count I), and burglary of an occupied structure with an assault therein, in violation of Florida Statute Section 810.02(2)(a)(b) (Count II). As to Count I, the State charged JOHNSON upon both theories of premeditation and felony-murder.

2. On November 4, 1991, a jury trial commenced. On November 7, 1991, JOHNSON was found guilty of both counts.

3. The penalty phase commenced on November 13, 1991. The jury recommended a death sentence by a vote of 9-3.

4. On December 13, 1991, the Circuit Court entered its Sentencing Order. As to Count I, JOHNSON was sentenced to death. As to Count II, JOHNSON was sentenced to life imprisonment.

5. On direct appeal, the Florida Supreme Court affirmed JOHNSON's convictions and sentences after consolidating the oral argument with the one being prosecuted from JOHNSON's conviction for first-degree murder and death sentence in Case No. F89-12383B. Johnson v. State, 696 So.2d 326 (Fla. 1997). John Lipinski, Esq., was appointed to handle the appeal.

6. JOHNSON filed a Motion to Vacate, Set Aside, or Correct Illegal Sentence Pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. With the permission of the Circuit Court, it was amended.

7. After hearing from the parties pursuant to Huff v. State, 622 So.2d 982 (Fla. 1993), an evidentiary hearing was ordered, limited to trial counsel's failure to have conducted a reasonable investigation for mitigating evidence involving JOHNSON's psychological profile. All other issues were summarily denied. The evidentiary hearing was held October 4, 2002. Following the reception of evidence, written Memoranda were filed for the Court's assistance. The Motion to Vacate was denied. An appeal was filed with this Court. It was assigned Case No. SCO3-382.

8. At the same time that JOHNSON filed his Initial Brief with this Court, he filed a Petition for Writ of Habeas Corpus alleging ineffective assistance of counsel on direct appeal. The original Petition for Writ of Habeas Corpus was limited to Issue IX. In Issue IX, the constitutionality of the jury instruction given on the aggravating factor of cold, calculated, and premediated (CCP) was challenged. To the extent that trial counsel did not object to the CCP instruction at trial, he committed ineffective assistance of counsel. JOHNSON alleged that that Sixth Amendment violation persisted and applied even more forcefully to the conduct of appellate counsel.

9. JOHNSON raised the following issues in his Initial Brief on the Merits.

ISSUE I

WHETHER THE CIRCUIT COURT ERRED IN DETERMINING THAT JOHNSON'S TRIAL COUNSEL WAS NOT DEFICIENT, AND JOHNSON WAS NOT PREJUDICED BY INEFFECTIVE ASSISTANCE OF COUNSEL DURING PENALTY PHASE AND SENTENCING.

ISSUE II

WHETHER THE CIRCUIT COURT ERRED IN DENYING JOHNSON *AN* EVIDENTIARY HEARING TO CHALLENGE THE IMPROPER DELEGATION OF REPRESENTATION OF COURT-APPOINTED COUNSEL FOR TRIAL TO *AN* UNQUALIFIED ATTORNEY.

ISSUE III

WHETHER THE CIRCUIT COURT ERRED IN DENYING *AN* EVIDENTIARY HEARING TO DETERMINE IF TRIAL COUNSEL HAD EFFECTIVELY WAIVED VOIR DIRE ON DEATH QUALIFICATION.

ISSUE IV

WHETHER THE CIRCUIT COURT ERRED IN DENYING *AN* EVIDENTIARY HEARING ON COUNSEL'S INEFFECTIVENESS IN FAILING TO REHABILITATE JUROR WILLIAMS.

ISSUE V

WHETHER THE CIRCUIT COURT ERRED IN NOT GRANTING *AN* EVIDENTIARY HEARING ON THE ISSUE OF TRIAL COUNSEL'S CONSTITUTIONALLY INADEQUATE INVESTIGATION INTO THE FACTS AND CIRCUMSTANCES SURROUNDING HIS DETENTION BY THE POLICE THAT LED TO HIS TAPED CONFESSION.

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN APPLYING BRAM v. UNITED STATE, 168 U.S. 532 (1897) TO HIS MOTION TO SUPPRESS.

ISSUE VII

WHETHER THE CIRCUIT COURT ERRED IN DENYING *AN* EVIDENTIARY HEARING ON WHETHER TRIAL COUNSEL WAS INEFFECTIVE WHEN HE MADE NO EFFORT TO IMPEACH THE CREDIBILITY OF TREMAINE TIFT.

ISSUE VIII

WHETHER THE CIRCUIT COURT ERRED IN DENYING AN EVIDENTIARY HEARING ON WHETHER BADINI SHOULD HAVE REQUESTED A CONTINUANCE WHEN HE WAS NOT PREPARED TO PROCEED WITH THE PENALTY PHASE.

ISSUE IX

WHETHER THE CIRCUIT COURT ERRED IN REFUSING TO GRANT AN EVIDENTIARY HEARING ON TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO OBJECT TO THE AGGRAVATING FACTORS OF COLD, CALCULATED AND PREMEDITATED (CCP) ON THE GROUNDS OF CONSTITUTIONAL VAGUENESS, AND THAT JOHNSON WAS DENIED DUE PROCESS AND EQUAL PROTECTION WHEN THE JURY WAS GIVEN INSUFFICIENT GUIDANCE TO DETERMINE WHETHER TO APPLY THE AGGRAVATOR.

ISSUE X

WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT AN EVIDENTIARY HEARING ON WHETHER THE STATE SUPPRESSED THE IDENTIFIES OF WITNESSES WHO COULD HAVE TESTIFIED TO THE CIRCUMSTANCES UNDER WHICH JOHNSON WAS TAKEN INTO CUSTODY.

ISSUE XI

WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THE HOLDING OF MILLER v. STATE, 733 So.2d 955 (Fla. 1998), WOULD NOT BE RETROACTIVELY APPLIED TO THIS CASE.

ISSUE XII

WHETHER THE TRIAL COURT ERRED IN RULING THAT THE COURT'S INSTRUCTIONS UNCONSTITUTIONALLY AND INACCURATELY DILUTED THE JURY'S SENSE OF RESPONSIBILITY TOWARDS SENTENCING IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND TRIAL COUNSEL WAS INEFFECTIVE FOR NOT PROPERLY OBJECTING.

ISSUE XIII

WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THERE WAS NO PREJUDICE IN THE COURT'S INSTRUCTIONS CONCERNING NON-STATUTORY MITIGATING CIRCUMSTANCES.

ISSUE XIV

WHETHER THE TRIAL COURT ERRED IN DETER MINING THAT FLORIDA'S PENALTY-PHASE PROCEDURE DID NOT VIOLATE APPRENDI v. NEW JERSEY, 530 U.S. 466 (2000).

10. The State filed an Answer Brief. In it, the State claimed that many of the issues raised by JOHNSON should have been raised on direct appeal.

11. In response to the State's position, but without endorsing it, JOHNSON requested permission to file an Amended Petition for Writ of Habeas Corpus addressing whether any failure to have raised an issue on direct appeal constituted ineffective assistance of appellate counsel. This Amended Petition for Writ of Habeas Corpus follows

JOHNSON will now present all the issues he believes represented ineffective assistance of appellate counsel. In the interest of aiding this Court's consideration of those issues, they will be numbered as they relate to the issues presented in the Initial Brief.

ISSUE II

THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO HAVE CHALLENGED ON DIRECT APPEAL THE IMPROPER DELEGATION OF REPRESENTATION OF COURT-APPOINTED COUNSEL FOR TRIAL.

Back in April, 1989, when JOHNSON was first before the Circuit Court in this case, Arthur Huttoe was appointed to represent him. Huttoe had also been appointed to represent him in two other cases. They were the first-degree murder

case with Lee Lawrence as the victim, and the attempted first-degree murder case with Marshall King as the victim. As a S.A.P.D.,Huttoe was entitled to receive $50.00 per hour for in-court time, and $40.00 per hour for out-of-court.

With two first-degree murder cases where the State was seeking the death penalty, and the attempted murder case, Huttoe had a difficult and time-consuming task. Huttoe appeared to be up to it. He had been practicing criminal law for decades, and had had a great deal of experience in murder cases. Despite having been appointed, however, Huttoe did virtually no work on the case. He had devised a scheme whereby he owned an office building near the courthouse, and young attorneys would become his tenants. He worked out an arrangement with these young attorneys where they would assume the responsibilities for handling his criminal court appointments in exchange for a fee split. JOHNSON alleged in his Amended Motion to Vacate that it was a 60/40 split. JOHNSON further alleged that Raymond Badini, his trial counsel, was a participant in this scheme.

JOHNSON alleged in his Amended Motion to Vacate that Huttoe's referral of the case to Badini was an illegal and/or unethical referral. He urged the Circuit Court to find in the first instance that Huttoe did not have the right to make this referral in a court-appointed case. The

relevant qualifications of Huttoe and Badini needed to be compared in determining prejudice, presumed or otherwise. With a fee-splitting arrangement in place in cases with such a low hourly rate, JOHNSON alleged that a conflict of interest had been created that likewise could be presumed prejudicial to his case. Proof of the damage to his defense caused by this illegal and unethical referral could be found in evaluating his performance as described elsewhere in the other issues if prejudice could not be presumed.

The Circuit Court summarily denied this claim. The issue was framed as a violation of the Sixth Amendment right to effective assistance of counsel. An evidentiary hearing was granted on one aspect of JOHNSON's Sixth Amendment claim, but not all of them. The State now claims that JOHNSON should have raised the issue of the illegal referral to this Court on direct appeal.

JOHNSON believes that it was proper to bring all aspects of ineffective assistance of counsel in post-conviction proceedings. He objected to the Circuit Court considering the issues in isolation. Although the substitution of Badini for Huttoe was clear on the Record, the underlying reasons for it, in particular Huttoe's scheme to split fees with his attorneys/tenants was not before the Court until the 3.850 motion was filed. The degree to which Huttoe might have continued to participate in the case was

not in the Record on Appeal. The only evidence of this illegal referral was the fact of Huttoe's appointment and the fact that Badini made virtually all court appearances, including representation at the trial of the case. If the qualifications of the respective attorneys needed to be analyzed, that was not apparent from the Record on Appeal for this case on direct appeal.

Notwithstanding the above, if prejudice is to be presumed and reversal automatic when a different lawyer than the one appointed tries the case, then JOHNSON alleges that the failure to have challenged Badini's representation when it was Huttoe who was the one appointed constituted ineffectiveness of appellate counsel. In Woodberry v. State, 611 So.2d 1291 (Fla. 4th DCA 1992), rev. denied, 623 So.2d 496 (Fla. 1993), the Court declined to adopt a pro se rule prohibiting the substitution of counsel not appointed to represent the defendant in a critical stage of the proceedings (sentencing) in lieu of appointed counsel who had tried defendant's case at the discretion of the appointed attorney and without the consent of the defendant. The Court held that in order to demonstrate a constitutional violation, the defendant would have to show that the substituted counsel's performance was deficient. Id. Judge Stein, however, dissented. He stated his position as follows:

> In my judgment, a defendant is effectively denied counsel where a lawyer, possibly unprepared, appears without explanation at a critical stage in a criminal case on behalf of a defendant in custody, solely at the request of another court-appointed counsel. The attorney was neither selected with the defendant's consent nor formally approved to represent the defendant. He was not even a member of defense counsel's law firm. Under such circumstances, and in the absence of a record with respect to how this appearance came about, I would hold that the only effective way to assure sixth amendment protection is to remand for a new sentencing hearing.

611 So.2d at 1292 (J. STEIN, dissenting).

This decision was available to appellate counsel during this appeal. Other cases have addressed similar issues on direct appeal. See, e.g., Holley v. State, 484 So.2d 634 (Fla. 1st DCA 1986); McKinnon v. State, 526 P.2d 18 (Alaska 1974), overruled on other grounds, Kvasnikoff v. State, 535 P.2d 464 (Alaska 1975).

It should be noted, however, that Holley and McKinnon were really limited to establishing the legal principle that the attorney-client relationship is invaluable in the court-appointed as well as retained setting. In those cases, the Court was attempting to substitute appointed counsel on its own over the protests of the defendant. See also, Smith v. Superior Court of Los Angeles County, 68 Cal.2d 527, 68 Cal. Rptr. 1, 440 P.2d 65 (1968). JOHNSON did not object to Badini's substitution at trial because he was never asked what he wanted and he was unaware of his right to insist

that Huttoe represent him. Nonetheless, appellate counsel may have been obligated to have briefed the issue.

ISSUE VI

THAT APPELLATE COUNSEL SHOULD HAVE CHALLENGED THE VOLUNTARINESS OF JOHNSON'S CONFESSION BECAUSE IT WAS COMPELLED UNDER OATH.

In his 3.850 motion, JOHNSON alleged that the police had compelled his confession by placing him under oath. He cited as authority, Bram v. United States, 168 U.S. 532, 544-550, 18 S.Ct. 183, 187-190, 42 L.Ed. 567 (1897). That claim was summarily denied by the Circuit Court, but raised in JOHNSON's Initial Brief. In its Answer Brief, the State maintained that this claim was procedurally barred because it needed to be raised on direct appeal. To the extent that the State is correct, JOHNSON's appellate counsel was ineffective for failing to have included it in his argument.

The principal issue in this case on direct appeal from the conviction and sentence of death was the voluntariness of JOHNSON's confession. In fact, JOHNSON had confessed to another murder and an attempted murder at the same time. JOHNSON had also received a death sentence on the other murder case, and that case and this one were consolidated for oral argument purposes.

In light of the crucial importance of the suppression issues in the case, appellate counsel had an obligation to present all arguments supported by case law. The Bram case

was a foundational case in evaluating the voluntariness of a confession. It was cited by appellate counsel in his Initial Brief but only for the proposition that "a statement or confession must not be extracted . . . 'nor obtained by any direvct or implied promises, however slight, nor by the exertion of any improper influence."' 1994 WL 16013589*37. It was cited by this Court on direct appeal as stating the applicable legal standard upon which the evidence would be applied. Johnson, 696 So.2d at 329.

Despite its age, this venerable case retains its relevancy.

In reading Bram, the discussions concerning the administration of the oath dominates the decision. The U.S. Supreme Court goes to great lengths to describe the evolution of the oath and its origins in the English common law. It certainly was below the standard of criminal appellate practice for Bram not to be argued for the proposition that JOHNSON's confession was compelled by the administration of the oath. This rendered the statement involuntary. To the extent that this Court on direct appeal properly applied the totality of circumstances test, excluding the administration of the oath from those circumstances was constitutionally defective. If appellate counsel had not been remiss, it may have resulted in this Court rendering a contrary ruling on the voluntariness of JOHNSON's confession.

ISSUE IX

THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO HAVE CHALLENGED THE JURY INSTRUCTIONS DEFINING THE AGGRAVATING FACTORS OF COLD, CALCULATED, AND PREMEDITATED (CCP) ON THE GROUNDS OF CONSTITUTIONAL VAGUENESS.

In Jackson v. State, 648 So.2d 85, 87-9 (Fla. 1994), this Court invalidated a standard jury instruction on CCP, which was given at trial. This case was on direct appeal at the time. Jackson has never been overruled.

Despite the pendency of the direct appeal when Jackson was denied, no effort was made by appellate counsel to challenge the CCP instruction as being unconstitutional. In failing to do so, appellate counsel was ineffective.

This issue was the one raised in JOHNSON's original Petition for Writ of Habeas Corpus. The State had filed a Response in which it argued that trial counsel's failure to have objected to the CCP instruction failed to preserve the issue, which justified appellate counsel's failure to have raised it on direct appeal. Trial counsel's failure to have objected to the CCP instruction was raised in the 3.850 motion, and the appeal of its summary denial to this Court As JOHNSON asserted in that appeal (SC03-382), his trial counsel's failure to have objected to the CCP instruction was part of his demonstrated ignorance of death-penalty issues. JOHNSON had presented in his 3.850 motion numerous

examples of his trial counsel's lack of understanding or appreciation of death-penalty issues in furtherance of his Sixth Amendment claim.

This pleading is limited to complaints against appellate counsel. Appellate counsel was ineffective for failing to raise to this Court Jackson's significance. One of the most significant aggravators advanced by the State in this case was CCP. Appellate counsel should have known that a defendant obtains the benefit of new law that occurs while his case is pending on direct appeal. Hall v. Billy Jack's, Inc., 458 So.2d 760 (Fla. 1984); Eastern Airlines, Inc. v. Gellert, 438 So.2d 923 (Fla. 3d DCA 1983).
If an objection was not made in the lower court, then the issue must be presented as plain or fundamental error.

In the instant case, JOHNSON would have had a compelling argument that the constitutionally vague CCP instruction constituted plain or fundamental error. Plain or fundamental error is created precisely in circumstances such as these. See, e.g., Chandler v. State, 702 So.2d 186, 191 (Fla. 1997), cert. denied, 523 U.S. 1083 (1998); Whitfield v. State, 706 So.2d 1, 4 (Fla. 1997), cert. denied, 525 U.S. 840 (1998); Larkins v. State, 655 So.2d 95, 98 (Fla. 1995). This was, after all, a death-penalty case. The Jackson decision made it clear that the CCP instruction

given in this case was constitutionally deficient. What could be clearer error than that? Should not appellate counsel have made an effort to persuade this Court that trial counsel did not object because the law was clear at the time, but now it is not? JOHNSON maintains that appellate counsel should have raised the issue while the new law could be applied.

ISSUE XI

THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT ARGUING FOR DIRECTED VERDICT OF ACQUITTAL OF THE BURGLARY AND FELONY-MURDER CONVICTIONS BECAUSE THE PREMISES WERE OPEN TO THE PUBLIC.

At the time of trial, Florida Statute Section 810.02(2)(a)(b) prohibited a burglary conviction where the premises is open to the public. The statutory defense was not raised by trial or appellate counsel.

Subsequent to the decision of this Court on direct appeal, the case of Miller v. State, 773 So.2d 955 (Fla. 1998), was handed down. Miller affirmed the statutory bar on burglary convictions where the premises in question is open to the public. In his 3.850 motion, JOHNSON cited Miller as new law and urged that it be applied retroactively. The State argued that it should not be applied retroactively, The Circuit Court agreed, and denied JOHNSON's claim summarily.

On appeal of the denial of his 3.850 motion (SC03-382), JOHNSON raised the application of Miller to invalidate his burglary conviction and the felony-murder portion of his murder conviction. In its Answer Brief, the State characterized JOHNSON's claim as an attack on the sufficiency of the evidence, and maintained it should have been raised on direct appeal. To the extent that the State is correct, appellate counsel was constitutionally deficient in not having raised the defense that the laundromat where Tequila Larkins was killed was open to the public at the time of the offense.

Appellate counsel certainly had knowledge of Section 810.02(2)(a)(b) establishing the "open to the public" defense to a burglary charge. There was ample evidence that the laundromat was open to the public. Despite Larkins' intention to close the laundromat, there were still customers inside doing their laundry. JOHNSON was let in by Larkins because of her belief that he might be a customer. Because of the availability of the "premises open to the public" defense, appellate counsel should have made the argument. His failure to do so was constitutionally defective.

ISSUE XII

THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO HAVE RAISED ON DIRECT APPEAL THE IMPROPRIETY OF THE TRIAL JUDGE'S COMMENTS TO THE JURY THAT ITS ROLE WAS ADVISORY.

In his 3.850 motion, JOHNSON raised a claim under Caldwell v. Mississippi, 472 U.S. 520, 105 S.Ct. 2633, 86 L.Ed.2d 231 (1985). That claim was summarily denied by the Circuit Court. On appeal from that denial (SC03-382), JOHNSON raised the issue again. In its Answer Brief, the State maintained that any complaint concerning comments or instructions that improperly informed the jury of its role in considering the death sentence should have been raised on direct appeal. JOHNSON agrees with the State on this point. Appellate counsel's failure to have raised this issue was ineffective assistance of counsel.

At the time *of* trial and appeal, the U.S. Court *of* Appeals for the Eleventh Circuit had sustained Caldwell's objections to judicial comments equivalent to those made in the instant case. Adams v. Wainwright, 804 F.2d 1526 (11th Cir. 1986), vacated on other grounds sub nom., Dusser v. Adams, 489 U.S. 401 (1989); Mann v. Dugger, 844 F.2d1446 (11th Cir. 1988) (en banc). In his Initial Brief on the merits in SC03-382, JOHNSON complained that his trial counsel should have been aware of these cases, and brought

them to the trial judge's attention. His failure to have done so constituted ineffective assistance of counsel.

The failure to have raised these issues on direct appeal also constituted ineffective assistance of appellate counsel. In its Answer Brief in SCO3-382, the State claimed that Romano v. Oklahoma, 412 U.S. 1, 114 S.Ct. 2004, 129 L.Ed.2d 1 (1994), overruled Adams and Mann. JOHNSON takes the position that Romano modified or clarified those holdings, but did not overrule them.

To the extent that JOHNSON's appellate counsel cannot be faulted for failing to raise an issue that was not preserved below due to the ineffectiveness of trial counsel, any error could be considered fundamental. This particularly true in light of U.S. Supreme Court decisions in Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); and Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 553 (2002). Both these decisions stand for the proposition that the jury decides all elements of the crime beyond a reasonable doubt, and underlies the fundamental nature of judicial comments to the jury concerning its role in a capital case. JOHNSON understands that this Court in Robinson v. State, 865 So.2d 1259 (Fla. 2004) determined that Caldwell and Ring addressed different issues. JOHNSON would request this Court reconsider and reevaluate the position taken in Robinson and consider that

Ring as a vindication of Adams and Mann and a repudiation of the State's position on their viability when his case was on direct appeal.

ISSUE XIII

THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE INSUFFICIENCY OF THE JURY INSTRUCTION ON NON-STATUTORY MITIGATION.

In his 3.850 motion, JOHNSON advanced the issue that the non-statutory mitigation jury instruction was insufficient because it failed to identify any non-statutory mitigating circumstances. That claim was summarily denied by the Circuit Court. It was raised by JOHNSON again on appeal (SC03-382). In its Answer Brief, the State claimed that any deficiencies in the non-statutory mitigation jury instruction should have been raised on direct appeal.

Whether the non-statutory mitigation instruction was sufficient will be governed by the cases ~~Hitchcock v.~~ Duqqer, 481 U.S. 393, 107 S.Ct. 1821, 95 L.Ed.2d 347 (1987); and White v. State, 729 So.2d 909 (Fla. 1999). In his 3.850 motion, JOHNSON accuses trial counsel of failing to have requested a different non-statutory mitigation jury instruction. This was in the context of trial counsel's demonstrated ignorance of death-penalty issues. To the extent that appellate counsel should have raised ~~Hitchcock~~ Hitchcock on direct appeal, he was ineffective.

CONCLUSION

Upon the arguments and authorities aforementioned, the Petitioner requests this Court make a determination that his appellate counsel was ineffective, and order a new trial.

Respectfully submitted,

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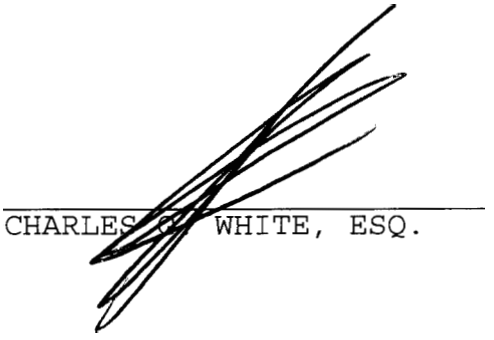

CHARLES G. WHITE, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 11th day of June, 2004, to: SANDRDA S. JAGGARD, ASST. ATTORNEY GENERAL, Office of the Attorney General, 444 Brickell Avenue, Suite 950, Miamim, FL 33131; and GAIL LEVINE, ASST. STATE ATTORNEY, State Attorney's Office, 1350 N.W. 12th Avenue, Miami, FL33125.

Respectfully submitted,

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