IN THE SUPREME COURT OF FLORIDA

CASE NO. SCO4-518

JIM ERIC CHANDLER,

Petitioner,

v.

JAMES V. CROSBY, JR,

Respondent.

ON PETITION FOR WRIT OF HABEAS CORPUS

INITIAL BRIEF OF APPELLANT

MARTIN J. MCCLAIN
SPECIAL ASSISTANT CCRC-SOUTH
Florida Bar No. 0754773
141 N.E. 30th Street
Wilton Manors, FL 33334
(305) 984-8344

CCRC-SOUTH
101 N.E. 3rd Avenue, Suite 400
Fort Lauderdale, FL 33301
(954) 713-1284

COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

This proceeding involves a petition for a writ of habeas corpus filed in light of the recent decision by the United States Supreme Court in *Crawford v. Washington*, 158 L. Ed. 2d 177 (2004). References to the record in this brief shall be as designated in Mr. Chandler's habeas petition. References to other documents and pleadings will be self-explanatory.

REQUEST FOR ORAL ARGUMENT

Mr. Chandler has been sentenced to death. The resolution of the issues involved in this action will therefore determine whether he lives or dies. This Court has not hesitated to allow oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument would be more than appropriate in this case, given the seriousness of the claims involved and the stakes at issue. Mr. Chandler, through counsel, accordingly urges that the Court permit oral argument.

PROCEDURAL HISTORY

On August 20, 1980, Mr. Chandler was charged by indictment in Indian River County, Florida, with two counts of first-degree murder, two counts of robbery with a deadly weapon, three counts of trafficking in stolen property, and one count of aggravated assault. Mr. Chandler entered pleas of not guilty. Mr. Chandler's trial commenced on May 6, 1981. The jury returned a verdict finding Mr. Chandler guilty on May 18, 1981. The penalty phase was conducted on May 19, 1981. The sentencing jury returned advisory sentences of death (R1. 4205-06). Over objection, the court immediately imposed sentences of death (R1. 4208).

Mr. Chandler appealed to this Court. In deciding the direct appeal, this Court affirmed the verdicts of guilt, but vacated the sentence of death and remanded to the trial court. *Chandler v. State*, 442 So. 2d 171, 174 (Fla. 1983)(finding that the trial court had erred in granting two challenges for cause on the State's motion).

On remand, the trial court granted a motion for change of venue from Indian River County to St. Lucie County. The re-sentencing was conducted on September 13-17, 1986. During the re-sentencing proceedings, over the repeated objection of Mr. Chandler, the trial court allowed the introduction of hearsay testimony through the lead detective to prove the aggravating circumstances upon

which the State relied to argue that Mr. Chandler should receive a death sentence. The record shows that Mr. Chandler did timely object to the admission of the hearsay evidence in violation of the Confrontation Clause through the course of the re-sentencing proceedings. (RS. 167-169, 171, 175, 193-195, 219, 222, 224, 225, 226, 230, 233, 238, 241, 243, 244, 331, 339, 340, 343, 345, 355). The State repeatedly argued that guilt had already been determined: "it's totally unfair to the State to require that we have to reprove the chain when it's already been proved, this jury would've already heard this evidence" (RS. 170). The hearsay evidence specifically was used to support the following aggravating factors:

1. That the crime was committed for the purpose of avoiding or preventing a lawful arrest.

2. That the crime was committed for financial gain.

3. That the crime was especially wicked, evil, atrocious or cruel.

4. That the crime was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

(R. 327-330).

The guilty verdict that had been upheld in the direct appeal did not specify whether the jury found Mr. Chandler guilty of premeditated murder or felony murder or whether there was any agreement in the jury between the two (R1. 3659-

60). The vagueness in the guilty verdict in Mr. Chandler's first degree murder conviction was used by the prosecution at the re-sentencing to argue two different aggravating circumstances. Mr. Chandler's counsel objected to the State's reliance on the guilty verdicts to prove both the "in course of a felony" and "cold, calculated and premeditated" aggravating circumstances:

> [The State] The next aggravating circumstance that the murder was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. And submit to you that premeditation, he was found guilty of premeditated murder. I submit to you that you also can look to premeditation.
>
> [The Defense] MR. UDELL: Judge can we approach the bench on something?
>
> THE COURT: You may.
>
> MR. UDELL: I have an objection to make.
>
> COUNSEL APPROACH THE BENCH
>
> MR. UDELL: Judge at this time we have an objection to the comment made by the State Attorney and move for a mistrial, ask you to strike his last comment or give a cautionary instruction to the jury to disregard the comment. The comment we object to is that the defendant was convicted of premeditated murder. Judge the defendant was convicted of first degree murder, we don't know whether it's premeditated or felony murder. Judge we've made the objection, (mumble) made this argument before..

THE COURT: Uh-huh.

MR. UDELL: ..and I'll just re-adopt my argument. Judge..the defendant is convicted of first degree murder that's what the jury instruction told them, not premeditated first degree murder but first degree murder. And we think it's highly improper that without a cautionary instruction that the jury may be under the misimpression that he was convicted of premeditated first degree murder and ask you to strike that from the record, give cautionary instruction and move for a mistrial.

(R.S. 835-36). In the penalty phase, both premeditation and the same underlying felony were presented to the jury as aggravating circumstances, even though it was unknown on which basis Mr. Chandler had been convicted of first degree murder.

The jury recommended death sentences on September 17, 1986. On September 18, 1986, the trial court sentenced Mr. Chandler to death. Mr. Chandler appealed.

Mr. Chandler's first argument in his Initial Brief was that "the court committed fundamental error, and denied Appellant the right of confrontation, by admitting hearsay statements where the hearsay declarants never appeared before the penalty phase judge and jury." Initial Brief at 13. Mr. Chandler asserted before this Court that his Sixth Amendment right of confrontation had been violated by the admission of hearsay evidence at the re-sentencing. In its Answer Brief, the State argued, "the hearsay evidence admitted herein was relevant, and was susceptible to

fair rebuttal." Answer Brief at 18 (emphasis in original). The State conceded that it had made no showing of unavailability, but argued that there was "***nothing*** to indicate the declarants were ***not*** available for appellant's use." *Id*. (emphasis in original).

This Court affirmed the sentence of death. *Chandler v. State*, 543 So. 2d 701 (Fla. 1988). This Court rejected Mr. Chandler's argument under the Confrontation Clause, saying:

> A resentencing is not a retrial of the defendant's guilt or innocence. [Citation]. Because a jury cannot be expected to make a decision in a vacuum, it must be made aware of the underlying facts. [Citation]. Both the state and the defendant can present evidence at the penalty phase that might have been barred at trial because a "narrow interpretation of the rules of evidence is not to be enforced." [Citation]. To be admissible, however, evidence must be relevant.

Chandler v. State, 534 So.2d at 703. Accordingly, this Court concluded, "[w]e do not find that the introduction of hearsay testimony rendered subsection 921.141(1) unconstitutional as applied in this case." *Id*.

The Governor signed a death warrant for Mr. Chandler on April 30, 1990. A petition for writ of habeas corpus was filed with this Court. On June 8, 1990, this Court granted a stay of execution and leave to amend the application for a writ of habeas corpus. *Chandler v. Dugger*, No. 76, 039 (Fla. 1990). Mr. Chandler's

counsel was ordered to amend the habeas petition and file all other state post-conviction actions by September 23, 1990.

Mr. Chandler's amended petition for state habeas corpus relief and his motion to vacate were filed as ordered even though collateral counsel maintained that they were woefully incomplete. On July 24, 1991, the trial judge signed the State's order without permitting any opportunity for Mr. Chandler to present evidence, or even argument, regarding the substantial issues raised in the motion to vacate. Subsequently, both Mr. Chandler's habeas petition and his Rule 3.850 appeal to this Court were denied. *Chandler v. Dugger*, 634 So. 2d 1066 (1994).

Thereafter, Mr. Chandler filed a petition for federal habeas relief in federal district court. After the petition was summarily denied in the federal district court, Mr. Chandler appealed. On appeal, the denial of the petition was affirmed by the Eleventh Circuit. *Chandler v. Moore*, 240 F.3d 907 (11th Cir. 2001).

On August 26, 2002, Mr. Chandler filed a petition for writ of habeas corpus in this Court seeking relief in light of the decision in *Ring v. Arizona*, 536 U.S. 584 (2002). On July 7, 2003, this Court summarily denied the petition relying upon its previous decisions "in *Bottoson v. Moore*, 833 So. 2d 693 (Fla 2002), and *King v. Moore*, 801 So. 2d 143 (Fla. 2002)." *Chandler v. Crosby*, FSC Case No. SC02-1901 (July 7, 2003).

On March 8, 2004, the United States Supreme Court issued its decision in *Crawford v. Washington*, 124 S. Ct. 1354 (2004). On March 26, 2004, Mr. Chandler filed a petition for a writ of habeas corpus in this Court in which he contended that this Court's decisions both on direct appeal and in state habeas must be revisited in light of *Crawford*. On April 29, 2004, this Court issued an order requesting briefing "as to whether the petition for writ of habeas corpus should be dismissed for failure to comply with Rule 3.851(d)(2)(B) or Rule 3.851 (d)(3)." This Initial Brief follows.

SUMMARY OF THE ARGUMENT

Historically, Fla. R. Crim. P. 3.850/3.851 and the writ of habeas corpus are the vehicles by which a convicted defendant can raise collateral challenges to a final judgment and sentence. Rule 3.850/3.851 and habeas corpus, however, are not interchangeable remedies. Rather, the vehicle by which a defendant raises the deprivation of a constitutional right depends on which stage of the criminal proceedings did the alleged constitutional error occur–during the proceedings in the trial court or the proceedings in the appellate court. Since the advent of Rule 3.850, it has long been clear that a Rule 3.850 motion is the vehicle by which a convicted defendant can raise a collateral challenge to proceedings over which the trial court has authority and which often requires factual development, whereas a habeas

corpus petition is directed to raising constitutional errors over which the appellate court has authority. Because Mr. Chandler's habeas petition raises a challenge to the correctness of this Court's prior determinations as to his Confrontation Clause issues, habeas corpus is the only available remedy.

This Court has a long history of accepting jurisdiction in habeas corpus proceedings when death-row inmates have sought, based on newly-decided law, to challenge this Court's prior determinations of a constitutional issue. Indeed, this Court has noted on several occasions that it has exclusive jurisdiction to review all types of collateral proceedings in death penalty cases. Mr. Chandler's case falls squarely within the class of cases in which the Court has repeatedly exercised its habeas corpus jurisdiction. As a result, neither Rule 3.851 (d)(2)(B) nor Rule 3.851 (d)(3) is implicated and this cause should not be dismissed.

If the Court were to depart from history and its longstanding practice, it must not do so in a way to arbitrarily extinguish Mr. Chandler's access to the courts, nor unconstitutionally suspend of the writ of habeas corpus. Dismissal of the petition for failure to comply with Rule 3.851 (d)(2)(B) or Rule 3.851 (d)(3) would also result in a denial of due process and equal protection. Non-capital defendants are not bound by the provision of Rule 3.851 (d)(3), and thus can raise *Crawford* claims via habeas corpus without concern over 3.851 (d)(3). Dismissal of Mr.

Chandler's petition would thus violate equal protection.

ARGUMENT

THIS COURT HAS AUTHORITY TO ENTERTAIN MR. CHANDLER'S PETITION FOR A WRIT OF HABEAS CORPUS, AND RULE 3.851 (d)(2)(B) AND/OR RULE 3.851 (d)(3) ARE NOT IMPLICATED UNDER THE CIRCUMSTANCES PRESENTED HEREIN.

I. INTRODUCTION.

On March 8, 2004, the United States Supreme Court issued its decision in *Crawford v. Washington*, 158 L. Ed. 2d 177 (2004). In *Crawford*, the Supreme Court held that, in accordance with a historical understanding of the intent of the drafters of the Constitution, the Sixth Amendment requires actual physical confrontation of a witness when the State seeks to introduce out-of-court testimonial evidence from that witness if that witness was available and the defendant had not been provided a prior opportunity for cross-examination of that witness. In other words, when the State attempts to introduce testimonial evidence by calling one witness to report what another witness said, "the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." *Crawford*, 158 L. Ed. 2d at 203. In light of the historical

understanding of the intent of the drafters of the Sixth Amendment, the *Crawford* Court overruled the "reliability" test it had previously adopted in *Ohio v. Roberts*, 448 U.S. 56 (1980), in favor of enforcement of what the Confrontation Clause actually requires – confrontation of the witnesses against the accused. *Crawford*, 158 L. Ed. 2d at 203.

Based upon the decision in *Crawford*, Mr. Chandler filed a petition for writ of habeas corpus, detailing the Confrontation Clause violations which had occurred at his re-sentencing, how those violations had been objected to in a timely fashion, and how those violations were raised and addressed by this Court during his direct appeal of the imposition of a death sentence at the re-sentencing. Mr. Chandler explained in his habeas petition that "[b]y virtue of *Crawford* and its application to Florida law, the constitutional error that occurred in the proceedings against Mr. Chandler is now revealed" and that as a result, Mr. Chandler's "sentence of death must be vacated, and a new penalty phase ordered at which Mr. Chandler's right of confrontation shall be honored" (Petition at 28).

Following the March 26, 2004, filing of Mr. Chandler's petition, this Court entered an order *sua sponte,* requesting briefing on "whether the petition for writ of habeas corpus should be dismissed for failure to comply with Rule 3.851 (d)(2)(B) or Rule 3.851 (d)(3)." The current version of Rule 3.851(d)(2), effective on

October 1, 2001, provides:

> (2) No motion shall be filed or considered pursuant to this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it alleges that
>
> * * *
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively. . . .

The current version of Rule 3.851(d)(3) provides:

> (3) All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, including petitions for writ of habeas corpus, shall be filed simultaneously with the initial brief filed on behalf of the death-sentenced prisoner in the appeal of the circuit's order on the initial motion for postconviction relief filed under this rule.

It should be observed that the prior version of Rule 3.851 is still in effect and governs "all motions and petitions" pending on October 1, 2001.

In this Brief, Mr. Chandler provides an historical analysis under Florida law of the postconviction remedies available through a petition for writ of habeas corpus and a motion to vacate the judgment and sentence pursuant to Rule 3.850/3.851. Through this historical analysis, Mr. Chandler demonstrates that this Court has held that it has exclusive authority to entertain habeas petitions when new case law issues that calls into question the correctness of this Court's prior

resolutions of direct appeals or prior appeals of the denial of postconviction relief. Accordingly, Mr. Chandler argues that to deny him his only remedy to present his constitutional challenge to his sentence of death would constitute an unconstitutional suspension of the writ of habeas corpus. *See* Art. I, §13, Fla. Const.

Moreover, Rule 3.851 only applies to Florida inmates under sentence of death. To use Rule 3.851 to strip only capital defendants of the ability to present constitutional challenges to prior appellate rulings upholding judgments and sentences violates the guarantee to due process and equal protection of the law.

II. MR. CHANDLER'S HABEAS PETITION PRESENTS A CLAIM WHICH SEEKS TO ADDRESS AND VINDICATE ERRORS IN THE APPELLATE PROCESS AND WHICH THEREFORE IS APPROPRIATELY RAISED IN HABEAS AND NOT IN A RULE 3.850/3.851 MOTION.

1. Habeas Corpus versus Rule 3.850/3.851.

The remedy of habeas corpus and the remedy available via a motion for postconviction relief under Fla. R. Crim. P. 3.850/3.851 are both traditional remedies for seeking postconviction relief in criminal cases. *See generally Richardson v. State*, 546 So. 2d 1037 (Fla. 1989). Despite this commonality of purpose, habeas corpus and Rule 3.851 often seek to vindicate the constitutional rights of convicted defendants in different stages of the criminal process. Thus,

habeas corpus and Rule 3.850/3.851 are not interchangeable remedies for the vindication of deprivations of constitutional rights. Rather, the vehicle by which a defendant raises the deprivation of a constitutional right depends on where the alleged constitutional violation occurred--during the proceedings in the trial court or the proceedings in the appellate court.

As this Court explained in *State v. Wooden*, 246 So. 2d 755 (Fla. 1971):

> Following the decisions of the United States Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335 (1963), *Miranda v. Arizona*, 384 U.S. 436 (1966), and numerous others, the habeas corpus remedy in Florida underwent a virtual rebirth among practitioners who discovered it to be the most useful tool available to remedy constitutional errors at trial level. At the same time, however, habeas corpus proved to be a cumbersome tool for the appellate courts to work with, primarily because the majority of habeas corpus petitions required factual determinations which the appellate courts were not equipped to make without appointment of a commissioner and temporary relinquishment of jurisdiction.
>
> It was primarily as a remedy for this problem that Rule 1.850 was promulgated. *See Roy v. Wainwright*, 151 So. 2d 825 (Fla. 1963); *Reddick v. State*, 190 So. 2d 340 (Fla. App. 2nd 1966); *Tolar v. State*, 196 So. 2d 1 (Fla. App. 4th 1967), and *Smith v. State*, 176 So. 2d 383 (Fla. App. 3rd 1965). Essentially, the Rule provides a method by which allegations formerly raised by petition for habeas corpus directed to the appropriate District Court may now be raised in the trial court which entered the judgment and sentence; if an evidentiary hearing is

necessary, it is a simple matter for a trial judge to provide one. *Johnson v. State*, 184 So. 2d 161 (Fla. 1966), rehearing, 185 So. 2d 466 (1966).

In view of the acknowledged purpose of Rule 1.850 to facilitate factual determinations, it will be supposed that therein lies the distinction between proceedings under the Rule and petitions for habeas corpus. But such is not the case. On petition for habeas corpus an appellate court may still appoint a commissioner to make factual findings if that measure is found to be necessary. A case in point frequently arises where a petitioner alleges deprivation of his right to direct appeal. *See Hollingshead v. Wainwright*, 194 So. 2d 577 (Fla. 1967); *Baggett v. Wainwright*, [229 So. 2d 239 (Fla. 1969)], and *State ex rel. Gaines v. Wainwright*, 233 So. 2d 174 (Fla. App. 2nd 1970).

In reality, the limitation on the scope of Rule 1.850 with which we are concerned here, is jurisdictional. A trial court may consider under the Rule those fundamental errors which it has the power to correct, errors arising in the trial process itself. Stated another way, a trial judge may correct any error going to the validity of the judgment and sentence. If an error invalidating a judgment and/or sentence is discovered, the trial judge has power under the rule to vacate and set aside the judgment and sentence and to order a new trial or discharge the prisoner.

But what is a trial judge to do if he discovers that a defendant's right to a direct appeal has been frustrated? Clearly, he cannot enter an order granting a delayed appeal in the appropriate District Court or the Supreme Court, because he has no power

> ***over these courts and such an order would not be binding upon them. Nor can he set aside the judgment and sentence because a finding of frustration of direct appeal does not bring into question the validity of the judgment and sentence.***
>
> ***However, the appellate court which would have been empowered to hear the direct appeal could clearly grant a defendant a delayed appeal in appropriate circumstances through the remedy of habeas corpus. Baggett v. Wainwright, supra.***

Wooden, 246 So. 2d at 756-57 (emphasis added).

While it is correct that the remedy available in habeas corpus may not be available in those situations where Rule 3.850/3.851 is available, *Wooden*, 246 So. 2d at 757; *State v. Bolyea*, 520 So. 2d 562, 563 (Fla. 1988), it is not the case that habeas corpus has been completely supplanted by Rule 3.850/3.851. As the Court explained in *Wooden*, Rule 3.850/3.851 is the appropriate vehicle to seek vindication of rights which directly affect the judgment and sentence entered by the trial court, a procedure which oftentimes requires factual development. *See also Richardson*, 546 So. 2d at 1039 ("The procedure under rule 3.850 logically places fact questions in the trial court first, where they belong"). However, where a defendant seeks to vindicate a right that affects the ***appellate process***, habeas corpus remains the appropriate vehicle, as the trial courts have no power or

authority over appellate courts. *See Baker v. State*, 2004 Fla. LEXIS 314 at *15 (Fla. March 11, 2004) (noting that habeas corpus is the appropriate remedy in those circumstances "where the petitioner is not seeking to collaterally attack a final criminal judgment of conviction and sentence, or ***where the original sentencing court would not have jurisdiction to grant the collateral postconviction relief requested even if the requirements of the rule had been timely met***")(emphasis added)(footnote omitted).[1]

This Court has long recognized that "allegations of ineffectiveness of appellate counsel are not cognizable under a Rule 3.850 motion because they do not relate to anything done by or transpiring before the trial court. Such allegations . . . should be addressed to the appellate court by means of a petition for habeas

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[1]This Court's decision in *Baker* issued shortly before this Court issued the order directing the submission of this brief. In *Baker*, this Court addressed the issue of non-capital defendants who were raising challenges to their convictions and sentences directly to this Court via petitions for writs of habeas corpus. The ultimate holding in *Baker*, however, on its face does not apply in the context of capital defendants. *Baker*, 2004 Fla. LEXIS 314 at *6 n.3 ("nothing in this opinion should in any way be interpreted as placing any limitations on this Court's ***mandatory jurisdiction*** to review the propriety of a first-degree murder conviction and resulting sentence of death")(emphasis added). As a result, it would seem that the briefing ordered in Mr. Chandler's case is an effort to address in the capital context the same matters discussed in *Baker* in a non-capital context. Thus, the recognition in *Baker* that petitions for writs of habeas corpus are still the proper means of raising constitutional claims that the trial court may not entertain in Rule 3.850 proceedings is particularly significant here, as explained *infra*.

corpus." *Francois v. Klein*, 431 So. 2d 165, 166 (Fla. 1983). In *Knight v. State*, 394 So. 2d 997 (Fla. 1981), this Court was faced with a habeas corpus petition filed by an individual under a sentence of death. The petitioner alleged that he had received ineffective assistance of appellate counsel during his direct appeal before this Court. *Id*. at 998-999. The Court originally transferred the petition to the circuit court "and directed that it be treated as a motion for post-conviction relief." *Id*. The trial court, however, concluded that it could not address the issues as they did not arise in the trial process over which the circuit court had legal authority. This conclusion was subsequently approved by this Court:

> The trial judge in considering the petition properly determined that since petitioner's claim for relief is predicated on the assertion of ineffective assistance of appellate counsel, such relief can only be granted by habeas corpus in the appellate court unless it was caused by an act or omission of the trial court. ***The ineffective assistance of counsel allegations stem from acts or omissions before this Court, and therefore we have jurisdiction and will consider the petition for habeas corpus on its merits***.

Id. at 999 (emphasis added). *See also Powe v. State*, 216 So. 2d 446 (Fla. 1968) (noting that habeas corpus, not motion for postconviction relief, is proper vehicle to assert deprivation of counsel for appeal); *Baggett v. Wainwright*, 229 So. 2d 239 (Fla. 1969) (same); *Rhome v. State*, 293 So. 2d 761 (Fla. 3d DCA 1974)

(same).

Within the area of capital collateral litigation, this Court has historically exercised its authority to entertain issues brought not only by death-sentenced inmates but also by the State of Florida in a variety of collateral procedural postures. Indeed, this Court has noted that it has "***exclusive*** jurisdiction to review ***all types of collateral proceedings in death penalty cases.***" *State v. Fourth District Court of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (emphasis added). *See also State v. Matute-Chirinos*, 713 So. 2d 1006 (Fla. 1998); *Trepal v. State*, 754 So. 2d 702 (Fla. 2000). This Court has entertained a variety of matters brought both by capital defendants and the State, including (a) interlocutory appeals brought by both capital defendants and the State, *see Trepal*, *supra*; *State v. Lewis*, 656 So. 2d 1248 (Fla. 1994); *State v. Kokal*, 562 So. 2d 324 (Fla. 1990); (b) petitions by capital defendants to reconsider matters addressed on direct appeal, *see Hill v. State*, 643 So. 2d 1071 (Fla. 1994); (c) petitions by the State to "review" the "application" of an aggravating circumstance in a particular case, *see Johnston v. Singletary*, 640 So. 2d 1102 (Fla. 1994); (d) out-of-time motions for rehearing of a previously decided Rule 3.850 motion, *see Spaziano v. State*, 660 So. 2d 1363 (Fla. 1995); (e) appeal by State of trial court's granting motion for rehearing and evidentiary hearing, *see State v. Salmon*, 636 So. 2d 16 (Fla. 1992); (f) challenges

by death-sentenced inmates to Florida's electric chair, *see Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999); *Jones v. Butterworth*, 691 So. 2d 481 (Fla. 1997); and (g) challenges by death-sentence inmates to the correctness of this Court's repeated determination that the Florida capital sentencing scheme comported with the Sixth Amendment right to trial by jury in light *Ring v. Arizona*, 536 U.S. 584 (2002), *see Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002). Given that this Court exercised jurisdiction in these cases and that this Court's jurisdiction to entertain petitions for extraordinary relief is limited to situations "where the original sentencing court would not have jurisdiction to grant the collateral postconviction relief requested," *Baker v. State*, 2004 Fla. LEXIS 314 at *15, these cases demonstrate the scope of this Court's jurisdiction.[2]

Particularly in the exercise of its habeas corpus jurisdiction, this Court has, in capital cases, entertained not only allegations of ineffectiveness of appellate counsel in habeas petitions, but also other types of challenges which do not necessarily affect the trial process but rather affect the appellate process or other matters within the Court's ***exclusive*** jurisdiction over capital collateral proceedings. *State v.*

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[2]Certainly where jurisdiction is an either or proposition, this Court's exercise of jurisdiction indicates a determination that the trial court lacked jurisdiction. Decisions from this Court in circumstances where it did not have jurisdiction would be void. Surely, this Court determined that it had jurisdiction before issuing the opinions cited herein.

Fourth District Court of Appeal, 697 So. 2d at 71. This Court has entertained the merits of successive habeas corpus petitions brought by capital defendants challenging (a) the erroneous standard of review applied by this Court in prior Rule 3.850 appeals, *see Johnston v. Moore*, 789 So. 2d 262 (Fla. 2001) (concluding that *Stephens v. State*, 748 So. 2d 1028 (Fla. 1999), did not qualify for retroactive application under *Witt v. State*, 387 So. 2d 922 (Fla. 1980); *Diaz v. Moore*, 797 So. 2d 585 (Fla. 2001) (decision without published opinion); (b) the constitutionality of the length of a death-sentence inmate's stay on death row and of the clemency process, *see King v. State*, 808 So. 2d 1237, 1246 (Fla. 2002); © the propriety of various death sentences following the decision by the Supreme Court in *Hitchcock v. Dugger*, 481 U.S. 393 (1987), *see Johnson v. Dugger*, 520 So. 2d 565 (Fla. 1988) (treating all-writs petition based on *Hitchcock* error as a petition for writ of habeas corpus); and (d) the validity of the direct appeal decision affirming the override of jury's recommendation of life in light of a new decision from this Court in another case, *see Mills v. Moore*, 786 So. 2d 532 (Fla. 2001) (addressing merits of whether *Keen v. State*, 775 So. 2d 263 (Fla. 2000), required reconsideration of Court's direct appeal affirmance of override). Notably, in none of these settings was there a dispute as to whether the proper vehicle for raising these issues was via a petition to writ of habeas corpus as opposed to a motion for postconviction relief

under Rule 3.850.[3]

In light of a series of cases decided by the United States Supreme Court in the 1980's, most notably *Hitchcock, supra*, *Lockett v. Ohio*, 438 U.S. 586 (1978), and *Booth v. Maryland*, 482 U.S. 496 (1987), this Court was faced with a number of habeas corpus petitions–including many in the successive posture. This Court accepted habeas jurisdiction and addressed whether the recently-decided United States Supreme Court decisions should be applied retroactively in Florida. *See, e.g. Riley v. Wainwright*, 517 So. 2d 656 (Fla. 1987) (in habeas proceeding, this Court determined *Lockett* qualified for retroactive application in Florida); *Thompson v. Dugger*, 515 So. 2d 173 (Fla. 1987) (in habeas proceeding, this Court determined *Hitchcock* qualified for retroactive application in Florida); *Mikenas v. Dugger*, 519 So. 2d 601 (Fla. 1988) (same); *Zeigler v. Dugger*, 524 So. 2d 419 (Fla. 1988) (same).

In *Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987), this Court was faced with a successive habeas corpus petition brought in light of *Hitchcock*. Noting that

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[3]On the same day that undersigned counsel filed the pending petition on behalf of Mr. Chandler, he also filed a petition on behalf of Wayne Tompkins. *Tompkins v. Crosby*, FSC Case No. SC04-519. In that petition, it was alleged that *Crawford* established that this Court erred in denying Mr. Tompkins' confrontation clause challenge to his death sentence during his direct appeal. Neither this Court nor the State has raised the issue of this Court's jurisdiction to entertain Mr. Tompkins' *Crawford* claim.

Down had previously raised numerous postconviction matters via Rule 3.850 and habeas corpus, the Court nonetheless recognized that *Hitchcock* represented a "substantial change in the law [that] ***requires us to reconsider issues first raised on direct appeal and then in Downs' prior collateral challenges***." *Id*. at 1070 (emphasis added).

However, soon a number habeas petitions reached this Court in which the petitioner alleged that based upon this Court's prior precedent, trial counsel did not investigate and present substantial non-statutory mitigation to the penalty phase jury.[4] This Court then held because many of the *Hitchcock* claims brought in habeas petitions involved factual matters that required evaluation by trial courts, in subsequent cases *Hitchcock* claims should be brought in a Rule 3.850 motion. *See Hall v. State*, 541 So. 2d 1125, 1128 (Fla. 1989) ("Appellate courts are reviewing, not fact-finding, courts. We hold, therefore, that *Hitchcock* claims should be presented to the trial court in a rule 3.850 motion for postconviction relief and that, after the filing of this opinion, such claims will not be cognizable in habeas corpus proceedings").

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[4]In *Cooper v. State*, 336 So. 2d 1133 (Fla. 1976), this Court held that evidence regarding non-statutory mitigating circumstances could not be presented to either the penalty phase jury or the sentencing. Subsequently, this Court recognized that the holding in *Cooper* violated the Eighth Amendment.

This Court was also called upon to address a habeas petition raising a constitution claim under *Booth v. Maryland*, 482 U.S. 496 (1987). In *Jackson v. Dugger*, 547 So. 2d 1197, 1299 n.2 (Fla. 1989), this Court granted sentencing relief noting that where a *Booth* claim had been previously raised and addressed on direct appeal, had been properly preserved at trial, and required no factual determinations in order to resolve the issue, the Court would entertain the claim in habeas:

> Ordinarily, an issue under *Booth* . . . should be raised by motion under rule 3.850. However, because this Court had specifically approved the introduction of Sheriff Carson's testimony on direct appeal, and because all the pertinent facts are contained in the original record on appeal, we believe that in this instance the issue may be appropriately considered in the petition for writ of habeas corpus.

Id. *Compare Parker v. Dugger*, 550 So. 2d 459, 460 (Fla. 1989) (refusing to address merits of *Booth* claim in successive state habeas petition because issue had not been objected to at trial, raised on appeal, and addressed by the Court on appeal).

Following the Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Ring v. Arizona*, 122 S. Ct. 2428 (2002), capital defendants raised constitutional challenges to Florida's capital sentencing scheme by way of successive habeas corpus petitions filed directly in this Court. *See, e.g. Mills v.*

Moore, 786 So. 2d 532, 537 (Fla. 2001); *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002); *King v. Moore*, 831 So. 2d 143 (Fla. 2002).[5] At no time was there an issue as to the propriety of those defendants employing the writ of habeas corpus to bring these matters to the Court's attention, irrespective of whether the Sixth Amendment issue decided in *Ring* had been previously raised and addressed by this Court in prior appeals.[6]

Importantly for the present posture of Mr. Chandler's case, this Court also has expressly noted that the proper manner for capital defendants to challenge this Court's prior appeal or Rule 3.850 decisions in light of new case law was through a petition for writ of habeas corpus. As noted above, this Court has repeatedly entertained successive habeas corpus challenges following a determination by this Court that it had previously misapplied the standards of review for ineffective assistance of counsel claims. *Johnson v. Moore*, *supra*; *Diaz v. Moore*, *supra*.

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[5]This Court on at least one occasion addressed the merits of a *Ring* claim brought by a capital defendant when neither a habeas petition nor a Rule 3.850 motion had been filed raising the claim, but rather the issue was raised in a notice of supplemental authority in a pending habeas proceeding. *See, e.g. Marquard v. State*, 850 So. 2d 417, 431 n.12 (Fla. 2002).

[6]In fact, Mr. Chandler filed a habeas petition raising a constitutional challenge to his sentence of death on the basis of *Ring*. This was well after Rule 3.851 was re-written effective October 1, 2001. Yet, the State did not challenge this Court's jurisdiction to entertain the petition, nor did this Court determine that jurisdiction was lacking. *See Chandler v. Crosby*, FSC Case No. SC02-1901 (July 7, 2003).

Moreover, when new case law emerges from the United States Supreme Court which requires this Court to "reconsider" issues first raised on direct appeal and/or in prior postconviction proceedings, the Court has also entertained successive habeas petitions. *Downs v. Dugger, supra*.

Most recently, the Court was faced with a capital defendant who raised in his Rule 3.850 motion an issue relating to the constitutionality of this Court's direct harmless error analysis. Not only did this Court find that Rule 3.850 was not the proper vehicle in which to raise the challenge, but this Court put all capital defendants on notice that such claims were improperly raised in a Rule 3.850 motion and should be raised via habeas corpus because a "postconviction motion is not the proper vehicle to challenge a decision of this Court. ***Rule 3.850 motions are a vehicle provided to challenge collateral issues related to the trial court proceedings, not appellate decisions***." *Foster v. State*, 810 So. 2d 910, 916 (Fla. 2002)(emphasis added). *See also Shere v. State*, 742 So. 2d 215, 218 n.7 (Fla. 1999) (finding that defendant's claim challenging this Court's harmless error analysis on direct appeal cannot be raised in a motion for postconviction relief); *Sireci v. State*, 773 So. 2d 34, 40 (Fla. 2000) (same); *Eutzy v. State*, 536 So. 2d 1014, 1015 (Fla. 1988) (approving denial of Rule 3.850 motion in which defendant improperly sought to challenge constitutionality of conclusions reached by Court

on direct appeal). Indeed, in *King v. Moore*, 196 F. 3d 1327 (11th Cir. 1999), the Eleventh Circuit, faced with a federal habeas challenge to this Court's harmless error analysis on direct appeal, noted the State of Florida's concession that "a trial court could not review a supreme court action for constitutionality" and that "***Florida law provides King with a viable means of raising this constitutional error before the Florida Supreme Court: an original habeas corpus proceeding before that court. The Florida Supreme Court indeed routinely entertains such petitions in death cases***." *Id*. at 1331 (citing cases)(emphasis added).

Based on the foregoing discussion, it is thus clear that "there is a history of the Supreme Court of Florida accepting jurisdiction," *Trepal*, 754 So. 2d at 706, in capital cases where defendants are seeking to challenge the prior decision of the Court either in direct appeal or in a postconviction appeal when the United States Supreme Court later issues a decision which, in the defendant's view, establishes that this Court's resolution of a constitutional claim was erroneous. The oft-expressed and longstanding view is that Rule 3.850 is a vehicle to challenge errors over which the trial court has authority and jurisdiction to correct, and habeas corpus is the vehicle to challenge errors which affect the appellate process where there are no factual matters to be resolved. This principle establishes that Mr. Chandler has properly filed a petition for writ of habeas corpus in this Court to

challenge the constitutional validity of this Court's prior holding on direct appeal finding no violation of the Confrontation Clause during Mr. Chandler's re-sentencing proceedings. The issue presented in the petition is whether this Court erred. This issue under Florida law must and can only be presented in an original habeas proceeding in this Court, the appellate court that allegedly committed the constitutional error.

2. Because Rule 3.850/3.851 is not the appropriate vehicle for the claims raised in the instant case, this case should not be dismissed for failure to comply with Rule 3.851 (d)(2)(B) or Rule 3.851 (d)(3).

In 2001, this Court rewrote Rule 3.851. The new Rule 3.851(a) provided:

> This rule shall apply to all motions and petitions for any type of postconviction or collateral relief brought by a prisoner in state custody who has been sentenced to death and whose conviction and death sentence have been affirmed on direct appeal. It shall apply to all postconviction motions filed on or after October 1, 2001. Motions pending on that date are governed by the version of this rule in effect immediately prior to that date.

The new Rule 3.851 included a provision that capital defendants are to file "[a]ll petitions for extraordinary relief in which the Supreme of Florida has original jurisdiction, including petitions for writ of habeas corpus," simultaneously with their

initial briefs on the Rule 3.850 appeal. Fla. R. Crim. P. 3.851 (d)(3).[7] Obviously, Rule 3.851(a), in setting forth the scope of the rule, did not use the phraseology appearing in Rule 3.851(d)(3), i.e., "[a]ll petitions for extraordinary relief in which the Supreme of Florida has original jurisdiction, including petitions for writ of habeas corpus." Certainly that failure would imply that "petitions for extraordinary relief . . . including petitions for writ of habeas corpus" were not included within the scope of the rule, except as specifically set forth in Rule 3.851(d)(3).

Given that the previous version of Rule 3.851(2) first set forth a provision requiring the filing of "[a]ll petitions for extraordinary relief" simultaneously with the filing of the initial brief in a Rule 3.850 appeal,[8] but that version of the rule only

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[7]Fla. R. App. Pro. 9.100, which governs original proceedings in an appellate court, was not amended in any corresponding fashion. On its face, Rule 9.100 "applies to those proceedings that invoke the jurisdiction of the courts . . . for the issuance of writs of mandamus, prohibition, quo warranto, certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction." Rule 9.100(a). As explained in subsection (h), "[i]f the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal . . . the court may issue an order directing the respondent to show cause."

[8]Rule 3.851(2) of the previously adopted rules, effective January 1, 1994, provided:

> All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, including petitions for writ of habeas corpus, shall be filed simultaneously with the initial brief filed on behalf of the death-sentenced prisoner in the appeal of the circuit's order on

applied to death-sentenced prisoners whose sentence of death became final after January 1, 1994, confusion arose regarding the effect of the re-written rule on individuals whose death sentence became final prior to January 1, 1994, and who had not yet filed a petition for writ of habeas corpus with this Court. Rule 3.851(b)(6), as effective on January 1, 1994.[9] In light of the confusion with respect to the applicability of the habeas filing deadline, this Court subsequently clarified that notwithstanding the date of finality of the defendant's conviction, the provision requiring the filing of a habeas petition with the initial brief on the Rule 3.851 appeal was to be applied to all capital defendants who had or would have such an appeal pending before this Court. *Mann v. Moore*, 794 So. 2d 595 (Fla. 2001).[10]

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the ***rule 3.850 motion***.

Only the italicized portion of this version of the rule was changed in the 2001 re-write, wherein this provision was designated Rule 3.851(d)(3). In lieu of the italicized words, this Court inserted: "initial motion for postconviction relief filed under this rule."

[9]Certainly, the provision making Rule 3.851 as adopted effective January 1, 1994, applicable only to individuals whose sentences of death became final after the effective date, reflected this Court's concern that the right to pursue collateral remedies was a substantive right attaching at the moment of finality which could not subsequently be negatively altered or terminated. *See Evitts v. Lucey*, 469 U.S. 387 (1985); *Bounds v. Smith*, 430 U.S. 817 (1977).

[10]It should be noted that Rule 3.850 does not contain a parallel provision requiring a habeas petition challenging the effectiveness on appellate counsel in a non-capital case to be filed simultaneously with the initial brief on a Rule 3.850

It is Mr. Chandler's position that the re-written Rule 3.851 (d)(3) cannot apply to him given that the issue presented in his habeas petition is not cognizable in a Rule 3.851 motion. As noted in the previous section, the claim raised by Mr. Chandler would not be appropriately raised in a Rule 3.851 motion even were Mr. Chandler filing his first motion for postconviction relief and state habeas petition. *Foster v. State*, 810 So. 2d at 916 (a "postconviction motion is not the proper vehicle to challenge a decision of this Court. Rule 3.850 motions are a vehicle provided to challenge collateral issues *related to the trial court proceedings, not appellate decisions.*")(emphasis added).[11] The right to present a challenge to this Court's resolution of a constitutional issue in his case in light of a new decision from the United States Supreme Court was a right extended to Mr. Chandler at the time his conviction and sentence of death became final in 1988. It was a right that this Court did not tamper with when Rule 3.851 was adopted effective January 1, 1994, because the rule on its face did not apply to Mr. Chandler. It is a right that could not simply have been extinguished on October 1, 2001, as to death-sentenced individuals under Rule 3.851, but not as to incarcerated individuals not

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appeal.

[11]It should be observed that this Court's decision in *Foster*, a capital case, was after Rule 3.851 was re-written effective October 1, 2001.

under a sentence of death. *See Evitts v. Lucey*, 469 U.S. 387 (1985); *Bounds v. Smith*, 430 U.S. 817 (1977).[12]

Mr. Chandler in his pending habeas petition has challenged this Court's prior resolution of his Confrontation Clause challenge to his re-sentencing proceedings. Mr. Chandler could not present a challenge to this Court's appellate decision rejecting his Confrontation Clause challenge to the circuit court. The circuit court would properly reject consideration of a challenge to this Court's appellate decision based upon this Court's clear jurisprudence. It is a claim that according to *Foster* can only be raised in an original proceeding before this Court, and it is a claim that could not be presented prior to the issuance of the opinion in *Crawford* on March 8, 2004. Non-capital defendants can and will be able to raise *Crawford* claims in habeas petitions filed in appellate courts that had erroneous relied upon *Ohio v. Roberts* or for that matter *White v. Illinois*, 502 U.S. 346 (1992), to affirm their convictions. There can be no valid basis for distinguishing between capital and non-capital habeas petitioners in these circumstances.[13]

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[12]When this Court entertained Mr. Chandler's habeas petition premised upon *Ring v. Arizona*, this Court gave no indication that Mr. Chandler's right to petition this Court for habeas relief had been terminated on October 1, 2001.

[13]The usual basis for distinguishing between capital and non-capital postconviction litigants is the extension of right to counsel to those under sentence of death. However, that distinction is irrelevant to the forfeiture of the right to seek

Rule 3.851 (d)(3) clearly was meant to require the filing of the initial habeas petition raising ineffective assistance of appellate counsel while the appeal of the denial of Rule 3.851 relief was pending. This was obviously to permit this Court to achieve judicial economy and consider all of the death-sentenced individual's known claims at one time.[14] Given that Mr. Chandler's habeas petition raising appellate ineffectiveness was litigated and decided long ago, Rule 3.851(d)(3), has no application to him. As noted previously, the nature of the claim raised by Mr. Chandler would not be appropriately raised in a Rule 3.851 motion even were Mr. Chandler filing his first motion for postconviction relief and state habeas petition. *Foster*, 810 So. 2d at 916 (a "postconviction motion is not the proper vehicle to challenge a decision of this Court. Rule 3.850 motions are a vehicle provided to challenge collateral issues ***related to the trial court proceedings, not appellate decisions***") (emphasis added).

Since it is clear that Rule 3.850/3.851 is not the appropriate vehicle for Mr. Chandler to challenge this Court's decision on direct appeal on his Confrontation

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relief when a new decision establishes error in an appellate court's denial of a direct appeal. Having counsel does not help a death sentenced individual to file a petition before the new decision is rendered.

[14]We know this because the provision was first adopted in 1994 by this Court, and the provision was used to stop piecemeal consideration of the initial Rule 3.851 appeal and the initial habeas petition.

Clause challenge in light of *Crawford*, Mr. Chandler submits that the instant habeas petition should not be dismissed for failure to comply with Rule 3.851 (d)(3). As this Court indicated in *Baker v. State*, habeas corpus is the appropriate remedy in these circumstances, "***where the original sentencing court would not have jurisdiction to grant the collateral postconviction relief requested even if the requirements of the rule had been timely met."*** 2004 Fla. LEXIS 314 at *15 (emphasis added)(footnote omitted). If Rule 3.851(d)(3) precludes consideration of Mr. Chandler's habeas petition, he has no means of presenting his *Crawford* claim, and the writ of habeas corpus has been unconstitutionally suspended as to him.[15] Rule 3.851(d)(3) cannot trump Mr. Chandler's constitutional rights to due process, equal protection, access to the courts, and petition for a writ of habeas corpus.

Moreover, Mr. Chandler submits that the instant habeas petition should not be dismissed for failure to comply with Rule 3.851 (d)(2)(B), which provides that no motion "shall be filed or considered pursuant to this rule if filed beyond the time

[15]Since Rule 3.850 does not contain a parallel provision, non-capital prisoners would still be able to petition for relief in light of *Crawford* where an appellate court rejected a direct appeal Confrontation Clause challenge to the conviction now determined to be meritorious under *Crawford*.

limitation provided in subdivision of (d)(1)[16] unless it alleges that . . . the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively." First, this provision on its face would appear to apply only to motions to vacate filed in circuit court. Clearly, where Rule 3.851, as re-written effective October 1, 2001, meant to apply to extraordinary writs filed in this Court, the rule specifically identifies petitions for extraordinary writs. *See* Rule 3.851(d)(3). Second, if the one year time limitation is applied, Mr. Chandler has presented his *Crawford* claim within two months of the decision in *Crawford*.

3. Dismissal for failure to comply with Rule 3.851 (d)(2)(B) and/or Rule 3.851 (d)(3) would result in an unconstitutional suspension of the writ of habeas corpus, and/or a violation of due process and equal protection.

Given the fact that the circuit would have no authority to correct the error that Mr. Chandler contends has now been established in this Court's prior dispositions of his Confrontation claims, dismissing this cause for failing to comply with Rule 3.851 (d)(3) and (d)(2)(B) would be tantamount to an impermissible Catch-22 and an unconstitutional suspension of the writ of habeas corpus. Art. I,

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[16]The time provision provided in subdivision (d)(1) is one-year after the judgment and sentence become final.

§13, of the Florida Constitution provides that the right to relief through habeas corpus must be "grantable of right, freely and without cost." This right to habeas corpus is a "basic guarantee of Florida law." *Haag v. State*, 591 So. 2d 614, 616 (Fla. 1992). As this Court has explained:

> Indeed, both simplicity and fairness are equally promoted by the right to habeas corpus relief that emanates from the Florida Constitution and has been partially embodied within Rule 3.850. Art. I, §13, Fla. Const.; *[State v.] Bolyea*, 520 So. 2d at 563. The fundamental guarantees enumerated in Florida's Declaration of Rights should be available to all through simple and direct means, without needless complication or impediment, and should be fairly administered in favor of justice and not bound by technicality.

Haag, 591 So. 2d at 616.

Moreover, dismissing this cause for failure to comply with Rule 3.851 (d)(3) or (d)(2)(B) would violate due process and equal protection. In postconviction proceedings, this Court has ensured that "the defendant has meaningful access to the judicial process." *State ex rel. Butterworth v. Kenny*, 714 So. 2d 404, 408 (Fla. 1998). *Accord Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000). However, because Rule 3.851 is not the appropriate mechanism to challenge prior decisions of this Court, dismissal of this case under these circumstances would violate due process by depriving Mr. Chandler of meaningful access to the judicial process.

Finally, as noted above, Rule 3.850 does not contain a provision similar to that set forth in Rule 3.851 (d)(3). Because a non-capital defendant would have the opportunity to file a writ of habeas corpus in light of *Crawford* without concern over Rule 3.851 (d)(3), which applies solely to capital defendants, application of Rule 3.851 (d)(3) to Mr. Chandler would violate equal protection. *Allen*, 756 So. 2d at 52 (striking Death Penalty Reform Act in part on equal protection grounds because "the successive motion standard applies only to capital prisoners in violation of the principles of equal protection").

In sum, Mr. Chandler submits that his habeas petition should not be dismissed but rather entertained on its merits. In the event that the Court determines that habeas corpus is not the appropriate vehicle, however, this Court would also have jurisdiction over this case under the Court's All Writs jurisdiction and thus, in light of the Court's "constitutional responsibility to refrain from dismissing a cause solely because an improper remedy has been sought," *Spaziano v. State*, 660 So. 2d 1363, 1365 (Fla. 1995), the case should still proceed before this Court. Should the Court alter its longstanding history of accepting jurisdiction via habeas corpus when a defendant seeks to challenge a prior decision of this Court, then the Court should nonetheless entertain Mr. Chandler's habeas petition and put other defendants on notice that, in the future, any claims based on

Crawford should be filed in a Rule 3.850 motion.[17] *See Hall v. State*, 541 So. 2d 1125, 1128 (Fla. 1989); *Jackson v. Dugger*, 547 So. 2d 1197, 1199 n.2 (Fla. 1989). In the alternative, if the Court determines that jurisdiction does rest with the circuit court, then Mr. Chandler requests that the Court transfer the petition to the circuit court with directions that it be treated as a Rule 3.851 motion. *See Spaziano, supra*.

CONCLUSION

Based on the foregoing arguments and authorities, Mr. Chandler submits that his petition for writ of habeas corpus should not be dismissed, but considered and addressed on the merits. In the alternative, to the extent that this Court rejects precedent and hold that the circuit court has jurisdiction to hear a claim that this Court erred in rejecting Mr. Chandler's direct appeal, he asks that this Court remand jurisdiction to the circuit court for proceedings upon Mr. Chandler's

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[17]Certainly, this Court would have to explicitly overrule *Foster*, 810 So. 2d at 916 (a "postconviction motion is not the proper vehicle to challenge a decision of this Court. Rule 3.850 motions are a vehicle provided to challenge collateral issues ***related to the trial court proceedings, not appellate decisions***") (emphasis added). Otherwise, circuit courts will erroneously dismiss or deny *Crawford* claims on the basis of *Foster*, and this Court will have to reverse and remand for the circuit court to entertain the merits of the claim before this Court can review the circuit court's legal resolution of whether this Court's direct appeal opinion was erroneous.

constitutional claim.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States Mail, first class postage prepaid, to Celia Terenzio, Assistant Attorney General, Office of the Attorney General, 1515 North Flagler Drive 9th Floor, West Palm Beach, FL 33401-3432 on May 18, 2004.

MARTIN J. MCCLAIN
Florida Bar No. 0754773
Special Assistant CCRC
141 N.E. 30th Street
Wilton Manors, FL 33334
(305) 984-8344

OFFICE OF THE CAPITAL
COLLATERAL REGIONAL
COUNSEL-SOUTH
101 NE 3rd Ave., Suite 400
Fort Lauderdale, FL 33301
(954) 713-1284

Attorney for Mr. Chandler

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this petition is typed using Times New Roman 14-point font.

MARTIN J. MCCLAIN
Attorney for Mr. Chandler