IN SUPREME COURT OF FLORIDA

CHRISTOPHER OFFORD,

Appellant,

v. Case No. **SC05-1611**

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE **FOURTEENTH** JUDICIAL CIRCUIT,
IN AND FOR **BAY** COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

ARGUMENT

Issue

THE DEATH SENTENCE IS DISPROPORTIONATE WHEN COMPARED WITH SIMILAR CASES WHERE THE AGGRAVATING CIRCUMSTANCES ARE FEW AND THE MITIGATION, ESPECIALLY THE MENTAL MITIGATION, IS SUBSTANTIAL.

Appellant argued in his initial brief that the death penalty is disproportionate punishment when compared to similar cases involving the death penalty. The cases for comparison involve one or two aggravating factors and substantial mitigation similar to that found here: severe mental illness; long-term drug and alcohol abuse; substantially impaired capacity; extreme mental and emotional disturbance; horrific childhood; remorse.

In its Answer Brief, the state has created several straw man versions of appellant's argument, which it then attacks

with gusto. The state's versions of appellant's argument are: (1) single-aggravator cases must be reduced to life;[1] (2) mental illness presumptively requires a life sentence;[2] (3) a diagnosis of schizophrenia presumptively requires a life sentence.[3]

As appellant has not made these arguments,[4] the state's attempts to refute them are irrelevant.

The state also argues the trial court correctly found the HAC aggravator applicable. Ans. Br. at 37-40. Appellant has

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[1] See Ans. Br. at 41 ("Offord makes much of the fact that the trial court found a single aggravator applicable to his sentencing determination, and on this basis argues his sentence should presumptively be reduced to life.")

[2] See Ans. Br. at 27-28 ("Offord relies on several cases which he asserts stand for the irreducible proposition that in capital cases when mental mitigation evidence presents itself–i.e., a long history of mental health issues–a death sentence must be reduced to life imprisonment"); Id. 42 ("Offord suggest [] that where a defendant suffers from a mental illness and/or has spent most of his life institutionalized, he must invariably have his death sentence commuted to life").

[3] See Ans. Br. at 53 ("to the extent that Offord maintains his history of schizophrenia requires, ipso facto, he be sentenced to life...this reasoning is wanting).

[4] The pages in the Initial Brief the state cited for these arguments contain discussion of case law related to the facts of this case. For example, appellant noted the present case involves one aggravator arrayed against extensive mitigation, especially mental mitigation, and then quoted this Court's repeated admonition that one-aggravator death sentences have been affirmed only where there was little or no mitigation, even where the sole aggravator is HAC, as here. See Initial Brief at 27, and cases cited therein.

not challenged HAC, so this argument is also irrelevant.

The state next cites without discussion four cases where this Court affirmed the death penalty despite there being only one aggravator, HAC. Ans. Br. at 41-42. These cases actually support appellant's position because the mitigation in those case was weak compared to the present case. See Boyd v. State, 910 So.2d 167 (Fla. 2005)(no statutory mental mitigators); Butler v. State, 842 So.2d 817 (Fla. 2003)(no statutory mitigators); Blackwood v. State, 777 So.2d 399 (Fla. 2000)(no statutory mental mitigators; no history of mental illness; Cardona v. State, 640 So.2d 361 (Fla. 1994)(statutory mental mitigators found due to daily cocaine use but no history of major mental illness).

Next, the state offers four cases which it contends "most comport" with Offord's case: Booker v. State, 773 So.2d 1079 (Fla. 2000); Rimmer v. State, 825 So.2d 304 (Fla. 2002); Jeffries v. State, 797 So.2d 573 (Fla. 2001); Rogers v. State, 783 So.2d 980 (Fla. 2001). These cases do not remotely resemble the present case. In Booker, the defendant raped and stabbed to death a 94-year-old woman. Four aggravating factors were found, including under sentence of imprisonment (Booker was on conditional release when he committed the murder, after serving time for robbery); prior violent felony (between his initial murder trial and the retrial, Booker was

convicted of aggravated battery for burning a prison guard while incarcerated at Florida State Prison); murder while engaged in sexual battery and robbery; and HAC. The nature and extent of the four aggravating circumstances in Booker is much greater than here with only one. Furthermore, although significant mitigation existed in Booker's case, including the statutory mental mitigators, Booker was able to function normally in everyday society–-he was in the military, became a poet while in prison, and did not have a history of psychiatric hospitalizations–whereas Offord couldn't function by himself in the outside world. In Panama City, other people found him jobs (which he couldn't hold), drove him around, and provided free housing. Offord was helpless in everyday society.

Rimmer is not even in the ballpark. Rimmer killed two people while robbing a car stereo store. Two employees and two customers were ordered to lie face down on the floor and their hands were duct taped. After loading up the stereo equipment, Rimmer told the first victim, "you know me," and shot him in the back of the head. He did the same to the other employee and then thanked the remaining victims for their cooperation and told them to have a nice day. Rimmer was arrested after leading police on a high speed chase. There were six valid aggravating factors, including eight

prior felony convictions, and no statutory mitigation. Rimmer, in which a habitual violent offender planned a robbery, took weapons with him, and used those weapons to eliminate any potential witnesses, is not anything like the present case, which involved a sudden, utterly irrational assault against a loved one.

Jeffries and Rogers also differ in significant respects from the present case. Both are robbery murders with more aggravation and substantially less mitigation than in the present case. In Jeffries, the defendant stabbed to death a 60-year-old woman in her home and stole her jewelry, which he later pawned. The trial court found two valid aggravators: robbery and HAC. Although impaired capacity was found as a mitigator, the trial judge concluded the level of substantial impairment at the time of the crime was "minimal at best." In Rogers, the defendant met the victim in a bar, and after she gave him a ride, stabbed her to death and fled with her jewelry and car. Rogers was apprehended in Kentucky after a high speed chase. The trial court found two aggravators, pecuniary gain and HAC, and one statutory mitigator, impaired capacity. In affirming the death sentences, this Court cited other robbery/murders with a comparable balance of aggravating and mitigating factors.

Last, the state contends the cases Offord cited for

comparison are inapposite because they do not include HAC or CCP, or they involve defendants whose faculties were "debilitated" at the time of the murder either by extreme mental or emotional disturbance, drugs or alcohol, or youth. Ans. Br. at 53.

But five of the seven cases appellant cited for comparison do include HAC[5] or CCP.[6] Although the other two cases do not include HAC or CCP, both include serious and/or numerous aggravating circumstances. See Fitzpatrick v. State, 527 So.2d 809 (Fla. 1988)(five aggravating factors, including prior violent felony, great risk of death to many persons, committed during a kidnapping, committed to avoid arrest, pecuniary gain); Larkins v. State, 739 So.2d 90 (Fla. 1999)(two aggravating factors, pecuniary gain and prior violent felony, which included a prior convictions for manslaughter and assault with intent to kill).

As for the state's contention that the defendants in the compared cases were more debilitated or impaired than Offord,[7]

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[5]Kramer v. State, 619 So.2d 274 (Fla. 1993); Nibert v. State, 574 So.2d 274 (Fla. 1993); Hawk v. State, 718 So.2d 159 (Fla. 1998); Robertson v. State, 699 So.2d 440 (Fla. 1997).

[6]DeAngelo v. State, 616 So.2d 440 (Fla. 1993).

[7]For example, the state asserts that "nothing in the record-such as expert testimony-unequivocally suggests that [Offord] was under the influence of an extreme emotional disturbance which impaired his ability to control his emotions

the state has ignored that the trial judge found both statutory mental mitigating circumstances applicable, that is, that Offord was under the influence of extreme emotional disturbance at the time of the murder, and that his capacity to conform his conduct to the law or appreciate the wrongfulness of his actions was substantially impaired. There was ample evidence supporting the trial judge's findings, including extensive expert testimony detailing Offord's long history of mental illness, nearly continuous institutionalization since age 6, and the onset of psychotic symptoms by adolescence. There is no question this crime arose from and was caused by Offord's mental illness.

Furthermore, proportionality review is a thoughtful, deliberative process that requires consideration of the totality of the circumstances in a case. Tillman v. State, 591 So.2d 167, 169 (Fla. 1991). The cases cited by appellant in his initial brief, though not identical in every aspect to the present case, are comparable in terms of the overall picture of mitigation and aggravation. The aggravating circumstances are few, the mitigation copious, and the defendants, like Offord, are emotionally disturbed or mentally

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at the time of Noser's murder." Ans. Br. at 57. And, the state distinguishes Kramer on the basis that Kramer was someone "whose capacity to conform his conduct to the dictates of the law was severely compromised at the time of the

ill individuals who were deemed to deserve less punishment because they have less capacity to control their actions.

If anything, the case for mitigation in the present case is more compelling than in the cases cited for comparison, especially with regard to impairment at the time of the murder.[8] The present case is unusual even among death penalty cases in the severity of mental illness demonstrated. Offord has essentially been a ward of the state due to mental illness since age 6; he began hearing voices when he was an adolescent, mostly to hurt himself but sometimes to harm others; he suffers from all three major types of mental illness (psychotic illness, mood disorder, personality disorder); he was been admitted to psychiatric units nearly 50 times in his adult life, often while in a psychotic state; he has a history of numerous suicide attempts and other acts of self-harm; and he has never been able to function in everyday life.

This is not one of the most aggravated and least mitigated of murder cases. Equally culpable defendants have received sentences of life imprisonment and so, too, should Offord.

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murder." Ans. Br. at 61.

[8]For example, in Robertson v. State, 699 So.2d 1343 (Fla. 1997), neither of the statutory mental mitigators was found.

CONCLUSION

Appellant respectfully requests this Honorable Court to vacate appellant's death sentence and remand for imposition of a life sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished By U.S. Mail to **RONALD LATHAM**, Assistant Attorney General, The Capitol, Tallahassee, Florida 32399-1050, and appellant, **CHRISTOPHER OFFORD**, #127139, Florida State Prison, 7819 NW 278th Street, Raiford, FL 32021, on this date, October 27, 2006.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY THAT, pursuant to Florida Rule of Appellate Procedure 9.210, this brief is typed in Courier New 12 Point.

Respectfully submitted

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