IN THE SUPREME COURT OF FLORIDA

CASE NO. SC_____

CROSLEY ALEXANDER GREEN

Petitioner,

v.

JAMES McDONOUGH, et al.,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

ADDITIONAL AUTHORITIES

PRELIMINARY STATEMENT

This is Mr. Green's first habeas corpus petition in this Court. Article l, Section 13 of the Florida Constitution provides: "The writ of habeas corpus shall be grantable of right, freely and without cost." This petition for habeas corpus relief is filed to address substantial claims of error under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution. These claims demonstrate that Mr. Green was deprived of the rights to a fair, reliable, and individualized trial and sentencing proceeding, and that the proceedings resulting in his conviction and death sentence violated fundamental constitutional imperatives.

References to the record on direct appeal are in the form, e.g., Dir. Vol. I, [page] 234. References to the postconviction record are in the form, e.g., PC-R Vol. I, 234. All other references will be self-explanatory or otherwise explained herein.

REQUEST FOR ORAL ARGUMENT

Mr. Green 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. Green, through counsel, urges the Court to permit oral argument.

INTRODUCTION

Significant errors which occurred at Mr. Green's capital trial and sentencing were not presented to this Court on direct appeal due to the ineffective assistance of appellate counsel. For example, appellate counsel failed to raise the issue that the trial court erred in finding that the prior violent felony aggravator had been established absent presentation of a certified copy of conviction or testimony from the victim describing the facts and circumstances to support the crime and conviction. Appellate counsel's failure to present the meritorious issue discussed in this petition demonstrates that his representation of Mr. Green involved "serious and substantial deficiencies," which prejudiced Mr. Green. *Fitzpatrick v. Wainwright*, 490 So.2d 938, 940 (Fla. 1986). "[E]xtant legal principles . . . provided a clear basis for . . . compelling appellate arguments[s]." *Id.* at 940. Neglecting to raise fundamental issues such as those discussed herein "is far below the range of acceptable appellate performance and must undermine confidence in the fairness and correctness of the outcome." *Wilson v. Wainwright*, 474 So.2d 1162, 1164 (Fla. 1985). Individually and "cumulatively," *Barclay v. Wainwright*, 444 So.2d 956, 959 (Fla. 1984), the claims omitted by appellate counsel establish that "*confidence* in the correctness and fairness of the result has been undermined." *Wilson*, 474 So.2d at 1165 (*emphasis in original*). Additionally, this petition present questions that were ruled on in direct appeal, but should now be revisited in light of subsequent case law or in order to correct error in the appeal process that denied Mr. Green his fundamental constitutional

rights. As this petition will demonstrate, Mr. Green is entitled to state habeas relief.

PROCEDURAL HISTORY

On June 20, 1989, the Petitioner, Crosley Alexander Green, was indicted by a Brevard County grand jury for first degree murder, two counts of kidnaping, and two counts of robbery with a firearm. Dir. Vol. XIII, 2483-5. Mr. Green was tried by jury from August 27 through September 5, 1990. On September 5, 1990, the jury returned a verdict of guilt as to all counts. Dir. Vol. X, 1977-8. The penalty phase hearing was conducted on September 27, 1990. At the conclusion of the penalty phase hearing, the jury recommended a sentence of death by a vote of eight to four. Dir. Vol. XII, 2333. On February 8, 1991, the trial court sentenced Mr. Green to death upon finding that the state had established four aggravating circumstances (the defendant was previously convicted of a prior violent felony in on January 26, 1977 in the State of New York, the murder was committed during the commission of kidnaping; the murder was committed for pecuniary gain, and the murder was especially heinous, atrocious, and cruel) and the defense had not established evidence in mitigation. Dir. Vol. XIII, 2433-54; XV, 2837-47.

On February 8, 1991, Mr. Green filed a timely notice of appeal to this Court. Dir. Vol. XIV, 2857. In his appeal, appellate counsel raised ten grounds for relief.[1] After

[1](1) admitting evidence of dog scent tracking; (2) denying Green's motion to suppress Kim Hallock's photographic and in-court identifications; (3) denying Green's

briefing and oral argument, this Court struck the lower court=s determination that the murder was especially heinous, atrocious, and cruel, however affirmed the judgment of conviction and sentence upon the finding that the three remaining aggravating factors outweighed the lack of mitigation. *Green v. State*, 641 So.2d 391 (Fla. 1994), *cert. denied*, 115 S.Ct. 1120 (February 21, 1995).

JURISDICTION TO ENTERTAIN PETITION AND GRANT HABEAS CORPUS RELIEF

This is an original action under Florida Rule of Appellate Procedure 9.l00(a). *See*, Art. l, Sec. 13, Florida Constitution. This Court has original jurisdiction pursuant to Fla. R. App. P. 9.030(a)(3) and Article V, Section 3(b)(9) of the Fla. Const. This petition presents constitutional issues which directly concern the judgment of this Court during the appellate process and the legality of Mr. Green=s death sentence.

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motion for the jury to view the murder scene; (4) instructing the jury on flight; (5) considering as separate aggravating circumstances that Green committed the murder for pecuniary gain and Green committed the murder during a kidnapping; (6) finding that the murder was heinous, atrocious, and cruel; and (7) refusing to find certain mitigating circumstances. Green also argued that (8) the death penalty is disproportionate; and (9) the heinous, atrocious, or cruel aggravator is unconstitutionally vague.

This Court has jurisdiction, *see, e.g., Smith v. State*, 400 So.2d 956, 960 (Fla. 1981), because the fundamental constitutional errors challenged herein arise in the context of a capital case in which this Court heard and denied Mr. Green=s direct appeal. *See, Wilson*, 474 So.2d at 1163 (Fla. 1985); *Baggett v. Wainwright*, 229 So.2d 239, 243 (Fla. 1969); *cf. Brown v. Wainwright*, 392 So.2d 1327 (Fla. 1981). A petition for a writ of habeas corpus is the proper means for Mr. Green to raise the claims presented herein. *See, e.g., Way v. Dugger*, 568 So.2d 1263 (Fla. 1990); *Downs v. Dugger*, 514 So.2d 1069 (Fla. 1987); *Riley v. Wainwright*, 517 So.2d 656 (Fla. 1987); *Wilson*, 474 So.2d at 1162.

This Court has the inherent power to do justice. The ends of justice call on the Court to grant the relief sought in this case, as the Court has done in similar cases in the past. The petition pleads claims involving fundamental constitutional error. *See Dallas v. Wainwright*, 175 So.2d 785 (Fla. 1965); *Palmes v. Wainwright*, 460 So.2d 362 (Fla. 1984). This Court's exercise of its habeas corpus jurisdiction and of its authority to correct constitutional errors such as those herein pled is warranted in this action. As this petition will demonstrate, Mr. Green is entitled to state habeas relief.

GROUNDS FOR HABEAS CORPUS RELIEF

By his petition for a writ of habeas corpus, Mr. Green asserts that his capital conviction and sentence of death were obtained and then affirmed during this Court's appellate review process in violation of his rights guaranteed by the Fourth, Fifth, Sixth,

Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

CLAIM I

APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO RAISE THE TRIAL COURTS ERROR IN FINDING THAT THE STATE HAD ESTABLISHED THE PRIOR VIOLENT FELONY AGGRAVATOR IN VIOLATION OF MR. GREEN=S FOURTH, FIFTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

On January 25, 1977, after spending a little more than ten months in a New York jail on an armed robbery charge, Crosley Green found himself in a quandary. His choice was either to remain in the State of New York and fight against a charge of robbery of a gas station in which he consistently maintained his innocence and was never identified as the actual perpetrator, or accept a plea offer. Accepting the plea and agreed disposition would return Mr. Green to his family in Florida as soon as possible without languishing in jail awaiting trial. In addition he would not have a criminal record or conviction upon successful completion of his sentence and his court records would be kept under a court seal. To his detriment, Mr. Green chose the latter.

The entirety of the prosecution=s evidentiary presentation to the jury in the penalty phase was devoted to showing that Crosley Green previously had been convicted of a

1977 armed robbery in New York. Because the State was incapable of proving the New York conviction with a certified copy of conviction, because one did not exist, the State called three witnesses, none of whom had any personal knowledge of the New York offense. Robert Rubin was a Florida parole officer who supervised Green as a transfer parolee from New York. Dir. Vol. XII, 2193-4. Mr. Rubin testified that Mr. Green advised him that he needed some form of identification for employment and could not obtain a birth certification or other proof of identification. Therefore, he suggested that Mr. Green register as a felon with the Brevard County Sheriff's Department, where they would take his photo and fingerprints, and that coupled with a letter from himself would provide documentation for him to obtain a driver=s license or identification card. *Id*. at 2194. The State then sought to authenticate the Criminal Registration Form which bore Mr. Green=s signature as proof of identity for registering as a convicted felon with the Brevard County Sheriff=s Office. *Id*. at 2195. Defense counsel objected to the State=s introduction of the ACriminal Registration Form@ on authentication, incompetency, and hearsay grounds. *Id*. at 2198-2202. Over defense counsel=s objection, the Court received into evidence the Criminal Registration Form bearing Mr. Green=s signature as State exhibit 1. *Id*. at 2204. Next the State called Russell George Cockriel, a Brevard County Sheriff's Office fingerprint examiner, to identify Mr. Green as the individual whose fingerprints were taken upon completing the Criminal Registration Form. *Id*. at 2206-7. Without an objection, the Court received into evidence the inked fingerprint card of Mr.

Green that was taken with the completion of the Criminal Registration Form as state exhibit 2. *Id*. at 2208. The last of the State's witnesses was Daniel Kopper. Mr. Kopper was the responding Officer on April 18, 1976 to the robbery call. Mr. Kopper testified that Mr. Green was charged with Armed Robbery and he later learned that Mr. Green had entered into a plea bargain and pled guilty to robbery. *Id*. at 2215-7. Mr. Kopper further testified that it was his understanding that Mr. Green was sentenced as a youthful offender. *Id*. at 2217.

During closing arguments to the jury, the State argued the following in support of the prior violent felony aggravator:

> The first one that I'd ask you to consider is whether we have shown that the defendant has previously been convicted of a felony involving the use or threat of use of violence, and here in this case obviously this-morning 1'va sure all of you realized that the testimony about the robbery in New York was in order to satisfy that requirement; and we submit to you that it is extremely significant that that early in his life this defendant had, in fact, already committed a robbery in New York for which he was convicted and sentenced to prison as a youthful offender . . . (.)

Id. at 2284. In the Defendant=s Spencer memorandum and oral argument to the judge, defense counsel correctly pointed out that the State had failed to produce a judgment and sentence regarding the New York conviction and argued that the evidence was insufficient to prove the prior violent felony aggravator, citing *Barclay v. State*, 470 So.2d 691 (Fla. 1985). Dir. Vol. XIII, 2405; XV, 2790. Additionally, defense counsel argued to the trial

court that you can prove the prior violent felony aggravator by Afacts and circumstances surrounding the conviction so that this court is convinced beyond and to the exclusion of a reasonable doubt that, in fact, the defendant was convicted of a previous crime involving violence.@ *Id*. at 2790.

With regard to the New York case, the trial court found that Mr. Green "was convicted of another armed robbery on January 26, 1977, in the State of New York." Dir. Vol. XIII, 2440. The written sentencing order on this point states in full:

> [2] FLA. STAT. 921.141(5)(b)
>
> WHETHER THE DEFENDANT WAS PREVIOUSLY CONVICTED OF ANOTHER CAPITAL FELONY OR OF A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE.
>
> The state urges the court to consider contemporaneous convictions for robbery and kidnapping in support of this aggravating circumstance as allowed in *Brown v. State*, 473 So.2d 1260 (Fla. 1985) and *Correll v. State*, 523 So.2d 562 (Fla. 1988). Because both Flynn and Hallock were victims of kidnapping and robbery, the robbery and kidnapping of Hallock could be considered as the basis for finding the existence of this circumstance. *Wasko v. State*, 505 So.2d 1314 (Fla. 1987). In this case, however, since the kidnapings are the basis for the aggravating circumstance, "Capital Felony Committed While Defendant Engaged in the Commission of Kidnapping," Section 921.141(5)(d), Florida Statutes, discussed in Paragraph 4 below, and the robberies are the basis for the aggravating circumstance, "Murder Was Committed for Pecuniary Gain," Section 921.141(5)(f), Florida Statutes, discussed in Paragraph 6 below, it would be improper doubling to consider these felonies for the purpose of this aggravating circumstance.

> The state did establish beyond a reasonable doubt that the defendant was convicted of another armed robbery on January 26, 1977, in the State of New York. This aggravating circumstance does exist. *See Cooper v. State*, 336 So.2d 1133 (Fla. 1976).

Dir. Vol. XV, 2840. In other words, the trial court agreed that the contemporaneous convictions for kidnapping and robbery could not be used to support the prior violent felony aggravator because doing so would amount to improper doubling. Likewise, the robbery convictions and pecuniary gain aggravator merged. Thus, the only offense supporting the prior violent felony aggravating circumstance was the New York case.

Appellate Counsel was ineffective for failing to appeal the trial court error in finding that the state had proven the prior violent felony aggravator as evidenced by the "Criminal Registration Form," along with the rolled fingerprint card. This documentary evidence was the only documentation entered in evidence to prove the existence of the New York offense and therefore was insufficient to prove up the offense as a matter of law. Historically, the elements necessary to prove a prior conviction as set down in *Warren v. State*, 74 So.2d 688 (Fla. 1954) where the "whole record . . . of the conviction and sentence 'meaning the record of those elements necessary to show the existence of a valid judgment in law without the aid of any presumptions of regularity and correctness;'

that is to say, the information, the plea of the accused, the jurisdiction of the court, the verdict of the jury, and the judgment and sentence of the court." The *Warren* requirement was superseded by Florida Rule of Criminal Procedure 3.986. *See, In re Florida Rules of Criminal Procedure*, 315 So.2d 172 (Fla. 1975); *Keith v. State*, 844 So.2d 715 (Fla. 2nd DCA 2003). ("A judgment and sentence in compliance with that rule contains the fingerprints of the defendant as well as information about the plea of the accused, the jurisdiction of the court, the verdict of any jury, the crimes for which the defendant stands convicted, the nature of the adjudication, and the sentence."); *McCaskill v. State*, 564 So.2d 573, 574 (Fla. 1st DCA 1990) (noting "the apparent intention of the rule to reflect on the face of the judgment a record of all of the elements previously held essential to prove a valid judgment without aid of presumptions."). Neither the criminal registration form nor any other evidence received during the entire sentencing phase satisfied these requirements nor has this Court permitted such circumstantial evidence in proving the existence of a prior aggravating factor. Likewise, information regarding a prior conviction that comes solely from a presentence investigation report, while admissible, is insufficient by itself to prove the prior conviction. *Barclay v. State*, 470 So.2d 691 (1985); *Williams v. State*, 386 So.2d 538 (Fla. 1980).

Although properly preserved, this issue was not briefed on direct appeal and is therefore an appropriate claim for a state habeas petition alleging ineffective assistance of appellate counsel. A claim of ineffective assistance of appellate counsel is cognizable in a

petition for a writ of habeas corpus. *See, Rutherford v. Moore*, 774 So.2d 637, 643 (Fla. 2000). The standard applicable to a claim of ineffective assistance of appellate counsel raised in a habeas petition mirrors the *Strickland v. Washington* standard for trial counsel ineffectiveness. *See*, *Jones v. Moore*, 794 So.2d 579, 583 (Fla. 2001); *Atkins v. Singletary*, 965 F.2d 952, 960 (11th Cir. 1992) (applying the *Strickland* test to challenge of counsel's effectiveness on appeal). As a result, to establish a claim of ineffective assistance of appellate counsel, petitioner must show (i) specific errors or omissions which show that appellate counsel's performance deviated from the norm or fell outside the range of professionally acceptable performance, and (ii) the deficiency of that performance compromised the appellate process to such a degree as to undermine confidence in the fairness and correctness of the appellate result. *See, State v. Riechmann*, 777 So.2d 342, 364 (Fla. 2000). Prejudice as a result of the deficient appellate representation is shown where Athere is a reasonable possibility that, but for counsel's professional error, the result of the proceeding would have been different.@ *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

Prejudice is manifest. After successfully arguing improper doubling in the trial court, Green renewed an additional improper doubling argument regarding pecuniary gain and in the course of kidnapping in this Court. *See*, Direct Appeal Initial Brief at 35-6. This Court rejected the argument on finding that the motivation for the kidnapping was broader, but said, AIf the sole purpose of the kidnapping had been to rob Flynn and

Hallock, we would resolve this issue differently.@ *Green v. State*, 641 So.2d at 395. Thus the Court implicitly confirmed the fact that the New York offense was the only basis for the prior violent felony aggravator. The Court also struck the heinous, atrocious and cruel aggravator. The Court then found the death sentence proportional "in light of other cases, ***the three remaining valid aggravating circumstances***, and no mitigators." *Id.* at 394 (emphasis added). Had the issue been raised in the instant case on direct appeal, Green=s sentence would have been reversed, and the cause remanded for re-sentencing. Compare *Barnes v. State*, 779 So.2d 366, 367 (Fla. 2nd DCA 2000)(AHad appellate counsel raised the issue, this court would have remanded for resentencing in accordance with the valid laws in effect····@). Due to Appellate=s counsel failure to raise this issue on direct appeal, the fairness and correctness of Geen's prior direct appeal affirming his conviction and sentence have been undermined and this Court should grant habeas relief. Alternatively, if this Court finds that this issue was not properly preserved for appeal, Mr. Green contends that the trial court committed fundamental error in finding the prior violent felony aggravator as to the New York conviction and therefore this issue is properly presented to this Court for review. *Skipper v. State*, 420 So.2d 877 (Fla. 1982).

CLAIM II

THE DEATH PENALTY IS DISPROPORTIONATE AND THIS CASE SHOULD BE RETURNED FOR IMPOSITION OF A LIFE SENTENCE.

Article II, section 3 of the Florida Constitution states, AThe powers of the state

government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.@ One of the powers assigned to the judicial branch under the Constitution is the power to issue writs of habeas corpus. Art. V, ' 3(b)(9), Fla. Const. authorizes this Court to issue writs of habeas corpus. *Crow v. State*, 866 So.2d 1257 (1st DCA 2004). In *Booker v. State*, 441 So.2d 148 (Fla.1983) this Court stated that a proportionality review Ais an inherent aspect of our review of all capital cases.@ 441 So.2d at 153. On postconviction review this has Court revisited the original proportionality review based on newly discovered evidence (life sentence received by a co-defendant). *E.g. Scott v. Dugger*, 604 So.2d 465 (Fla. 1992).

On direct appeal, after striking the HAC aggravator, this Court found the death sentence proportionate based on the three remaining valid aggravating circumstances and no mitigators. However, as shown elsewhere in these proceedings, Crosley Green was never convicted of an armed robbery in New York. According to the laws of New York, whatever crime Mr. Green served time for in 1977 was vacated long before his trial in the instant case.

The penalty of death is available for only the most aggravated, the most indefensible of crimes. *State v. Dixon*, 283 So.2d 1 (Fla. 1973). The death penalty is reserved only for those cases where the most aggravating and least mitigating circumstances exist. *Kramer v. State*, 619 So.2d 274, 278 (Fla. 1993). In *Kramer* the

victim pulled a knife on the defendant, the defendant threw a rock at the victim, hitting the victim in the head. The defendant then hit the victim again in the head with the rock, killing him. In aggravation, the trial court found two aggravators: prior violent felony conviction; and the murder was heinous, atrocious, or cruel. *Id*. at 277-78. Nevertheless, the Court determined that the death sentence was disproportionate. In the case of *Terry v. State*, 668 So.2d 954 (Fla. 1996), this Court indicated that a "robbery gone bad" was not necessarily a death case. The Court in *Terry* observed that, although there was not a great deal of mitigation, aggravation was also not extensive given totality of underlying circumstances. Such "robberies gone bad"have been held not to justify the death penalty. *See, Sinclair v. State*, 657 So.2d 1138 (Fla. 1995); *Thompson v. State*, 647 So.2d 824 (Fla. 1994). This case is akin to *Williams v. State*, 707 So.2d 683 (Fla. 1998) (After Aunder sentence of imprisonment@ aggravator was stricken because defendant, who fatally shot victim during robbery while an escapee from juvenile facility, was not Aimprisoned,@ death sentence imposed on defendant was disproportionate). Therefore, this Court should grant habeas relief and return this case for imposition of a life sentence.

CLAIM III
EXECUTION BY LETHAL INJECTION IS CRUEL AND/OR UNUSUAL PUNISHMENT UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND UNDER OF THE FLORIDA CONSTITUTION[2]

[2] *Contra Sims v. State*, 754 So.2d 657 (Fla. 2000).

The Eighth Amendment prohibits governmental imposition of "cruel and unusual punishments," and bars "infliction of unnecessary pain in the execution of the death sentence," *Louisana ex rel. Francis v. Resweber*, 329 U.S. 459, 464, 91 L.Ed. 422, 67 S.Ct. 374 (1947) (plurality opinion). "Punishments are deemed cruel when they involve torture or a lingering death . . ." *In re Kemmler*, 136 U.S. 436, 447, 34 L.Ed. 519, 10 S.Ct. 930 (1890).

Specifically, usage of a Acut down@ procedure, and usage of pancurium bromide (pavulon or also pancuronium) or other paralytic, violate both the state and federal cruel and unusual punishment clauses. Moreover, Florida's lethal injection law lacks necessary safeguards, procedures and protocols rendering the administration of lethal injection cruel and unusual punishment. Florida has no coherent set of procedures and fails to designate adequate equipment or trained personnel for the preparation and administration of the injection.

Despite the perception that lethal injection is a painless and swift death, negligent or intentional errors have caused persons executed intense suffering. Even when persons executed by lethal injection are first paralyzed, no evidence clearly demonstrates that they become unconscious to their pain and impending death. Based on eyewitness accounts of such executions, coupled with available scientific evidence regarding the hazards, lethal injection is unreliable as a "humane" method for extinguishing life.

CLAIM IV

MR. GREEN=S EIGHTH AMENDMENT RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT WILL BE VIOLATED AS DEFENDANT MAY BE INCOMPETENT AT TIME OF EXECUTION.

A prisoner cannot be executed if Athe person lacks the mental capacity to understand the fact of the impending death and the reason for it.@ This rule was enacted in response to *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595 (1986). The only time a prisoner can legally raise the issue of his sanity to be executed is after the Governor issues a death warrant. Until the death warrant is signed, the issue is not ripe. *Poland v. Stewart*, 41 F.Supp.2d 1037 (D. Ariz. 1999) (such claims truly are not ripe unless a death warrant has been issued and an execution date is pending); *Martinez-Villareal v. Stewart*, 118 S.Ct. 1618, 523 U.S. 637, 140 L.Ed.2d 849 (1998) (respondent=s Ford claim was dismissed as premature, not because he had not exhausted state remedies, but because his execution was not imminent and therefore his competency to be executed could not be determined at that time). However, Federal law requires that, in order to preserve a competency to be executed claim, the claim must be raised in the initial petition for habeas corpus.

CONCLUSION AND RELIEF SOUGHT

For all the reasons discussed herein, Mr. Green respectfully urges this Honorable Court to grant habeas relief in the form of a life sentence, or, in the alternative, remand to

the lower court for a new sentencing proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Habeas Corpus has been furnished by United States Mail, first class postage prepaid, to all counsel of record and the Defendant on August 2nd, 2006**.**

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Habeas Corpus, was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210.

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