IN THE SUPREME COURT OF FLORIDA

CLEMENTE JAVIER AQUIRRE-JARQUIN,	)	
Appellant,	)	
vs.	)	CASE NUMBER SC06-1550
STATE OF FLORIDA,	)	
Appellee.	)	

APPEAL FROM THE CIRCUIT COURT
IN AND FOR SEMINOLE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

Appellant only replies to points I and III. As for the other points, Appellant relies on the argument contained in the initial brief.

ARGUMENT

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED BY REQUIRING APPELLANT TO PROCEED TO TRIAL WITH COUNSEL WHOM HE HAD SOUGHT TO DISCHARGE AND BY PRECLUDING A MEANINGFUL EXERCISE OF APPELLANT'S RIGHT TO REPRESENT HIMSELF WHEN THE TRIAL COURT BLATANTLY MISLED APPELLANT DURING THE ***FARETTA***[1] COLLOQUY.

The State contends that the trial court closely followed the colloquy approved by this Court in ***In re: Amendments to Fla. R. Crim.P. 3.111(d)(2)-(3),*** 719 So. 2d 873, 876-78 (Fla. 1998). The state points out the portion of the colloquy reading:

> Do you understand that your access to the State Attorney *who is prosecuting you* will be severely reduced as compared to a lawyer who could easily contact the State Attorney?

In re: Amendments to Fla. R. Crim.P. 3.111(d)(2)-(3), 719 So. 2d 873, 877 (Fla. 1998). Appellant would have been satisfied if the trial court had even come close to the language cited above. Instead, the trial court incorrectly explained:

> You understand that you will not be able to have direct access to the prosecuting attorney in this case for the purpose of discussing what evidence might be presented or to negotiate a resolution in this case. **It takes a lawyer to do that.**

(XI 587) (Emphasis added.) Appellant submits that the trial court's language is a far cry from the recommended colloquy approved by this Court. The trial court's statement indicated that a *pro se* defendant would have **NO** direct access to the prosecuting attorney. The trial court's language emphasized appellant's lack of access for purposes of both plea negotiations ("to negotiate a resolution in this case"); as well as discovery("the purpose of discussing what evidence might be presented"). The trial court emphasized, "**It takes a lawyer to do that.**" Appellant's reply clearly indicated that he understood, "So, I won't get any information." The trial court failed to correct its erroneous advice following appellant's response that he would not receive any "information." Instead, the trial court continued the colloquy dealing with subsequent ineffective assistance claims. In a final act of hopelessness and surrender, appellant begrudgingly remained with his assigned lawyers recognizing, "**There is not an option.**" (XI 588)

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[1] ***Faretta v. California***, 422 U.S. 806 (1975).

POINT III

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT'S CAUSE CHALLENGE OF JUROR MORSE WHO CLEARLY BELIEVED THAT DEATH WAS THE APPROPRIATE PENALTY AND ALL FIRST-DEGREE MURDER CASES.

The record reflects that neither the parties nor the trial judge could remember juror Morse's name when Appellant's peremptory challenges were exhausted. However, Ms. Morse **had** been identified previously during voir dire. Defense counsel specifically challenged her for cause based on her response to questions concerning the death penalty. (VII 329) Defense counsel's cause challenge coupled with his action in reminding the judge of the erroneously denied cause challenge, and request for additional peremptory challenges, should be sufficient to preserve this issue for review.

The state argues in the answer brief that appellant's cause challenge of juror Morse was appropriately denied. The state relies on ***Barnhill v. State***, 834 So. 2d 836 (Fla. 2002) and ***Conde v. State***, 860 So. 2d 930 (Fla. 2003). However, those two cases are distinguishable from the case at bar. The jurors in ***Barnhill*** and

Conde subsequently indicated that they could follow the judge's instructions and put aside their personal beliefs. Appellee fails to cite where in the record juror Morse stated her ability to follow the court's instructions. Appellant does not believe that juror Morse ever indicated such. At best, juror Morse said that she would have to consider all possibilities, but admitted that the quest for her to consider life imprisonment rather than death, would be difficult and "an uphill battle." (VII 297-99)

CONCLUSION

Based upon the authorities, policies, and arguments cited herein and in the Initial Brief, Appellant respectfully requests that this Honorable Court grant the following relief:

As to Points I, II, III, and V, reverse and remand for a new trial;

As to Point IV, reverse and remand for discharge;

As to Points VI, VIII and IX, vacate appellant's death sentences and remand for a new penalty phase;

As to Point VII, vacate the death sentence imposed for the murder of Carol Bareis and remand for resentencing;

As to Point X, vacate appellant's death sentences and remand for imposition of life imprisonment with the possibility of parole.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand- delivered to the Honorable Bill McCollum, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to Clemente Javier Aquirre-Jarquin, #128074, Florida State Prison, 7819 N.W. 228th St., Raiford, Florida 32026, this ____ day of June 2008.

_____
CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced Times New Roman, 14 pt.

_____
CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER