IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1246

RICHARD LYNCH,

Petitioner,

v.

JAMES McDONOUGH, Secretary,
Florida Department of Corrections

Respondent.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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PROCECURAL HISTORY

The relevant facts were summarized by this Court on direct appeal:

> On March 23, 1999, a grand jury returned an indictment against appellant, Richard Lynch, for two counts of first-degree premeditated murder, one count of armed burglary of a dwelling, and one count of kidnapping. The indictment was the result of events that occurred on March 5, 1999, culminating in the deaths of Roseanna Morgan ("Morgan") and her thirteen-year-old daughter, Leah Caday ("Caday").
>
> On October 19, 2000, appellant pled guilty to all four counts of the indictment. Subsequently, the trial judge granted appellant's request to have the penalty phase conducted without a jury. During the penalty phase, the State produced a letter written by the appellant two days prior to the murders. In the letter, addressed to appellant's wife, Lynch admitted to having a "long affair" with Roseanna Morgan, which lasted from August 1998 until February 9, 1999. He detailed the affair and asked his wife to send copies of cards Morgan had written to Lynch and nude pictures Lynch had taken of Morgan to Morgan's family in Hawaii. Lynch wrote: "I want them to have a sense of why it happened, some decent closure, a reason and understanding...."
>
> The testimony elicited during the penalty phase regarding the events of March 5, 1999, included a tape of a telephone call that appellant made to the "911" emergency assistance service while still in the apartment where the murders occurred. On that tape, Lynch is heard admitting to the 911 operator that he shot two people at 534 Rosecliff Circle. He said he initially traveled to the apartment only to attempt to have Morgan pay a credit card debt, but resorted to shooting her in the leg and in the back of the head. He told the 911 operator that he had three handguns with him and that he shot Morgan in the back of the head to "put her out of her misery." Appellant also admitted to firing at the police when they first arrived on the scene.

As to Caday, appellant informed the 911 operator that he had held Caday at gunpoint while waiting for Morgan to return home. He related that she was terrified during the process prior to the shootings and asked him why he was doing this to her. Appellant admitted that he shot Caday, and said "the gun just went off into her back and she's slumped over. And she was still breathing for awhile and that's it." Appellant told the operator he planned to kill himself.

During the course of these events on March 5, 1999, appellant telephoned his wife three times from the apartment. His wife testified that during the first call she could hear a woman screaming in the background. Appellant's wife further testified that the screaming woman sounded "very, very upset." When Lynch called a second time, he admitted to having just shot someone.

Prior to being escorted from the apartment by police, Lynch also talked to a police negotiator. The negotiator testified that Lynch told her that during the thirty to forty minutes he held Caday hostage prior to the shootings, Caday was terrified, he displayed the handgun to her, she was aware of the weapon, and appeared to be frightened. He confided in the negotiator that Caday had complied with his requests only out of fear. Finally, appellant described the events leading to Morgan's death by admitting that he had confronted her at the door to the apartment, shot her in the leg, pulled her into the apartment, and then shot her again in the back of the head.

Several of Morgan's neighbors in the apartment complex also testified as to the events of March 5, 1999. Morgan's neighbor across the hall [FN2] testified that she looked out of the peephole in her door after hearing the initial shots and saw Lynch dragging Morgan by the hands into Morgan's apartment. She further testified that Lynch knocked on the door to Morgan's apartment and said, "Hurry up, open the door, your mom is hurt." The neighbor testified that Morgan was screaming and was bloody from her waist down. Morgan's neighbor further testified that the door was opened, then after entering with Morgan, Lynch closed

> the door and approximately five minutes later she heard the sound of three more gunshots. A second neighbor in the apartment complex also testified that approximately five to seven minutes after she heard the initial gunshots, she heard three more.
>
> > [FN2] The neighbor lived in the apartment directly across the hall from Morgan's apartment in the same apartment building.
>
> After his arrest, appellant participated in an interview with police in which he confessed to the murders. He again admitted the events of the day, telling police he showed Caday the gun and that she was very scared while they were waiting for Morgan to arrive home. He told the detective that Caday was afraid and that he was "technically" holding her hostage. He admitted to shooting Caday's mother, Morgan, four or five times in the presence of her daughter.
>
> In his post-arrest interview, Lynch also admitted that he planned to show Morgan the guns he brought with him to let her know he possessed them, and to force her to sit down and be quiet. He told the detectives he did not know why he did not just leave the guns in his car. He admitted shooting Morgan four or five times, dragging her into the apartment, and then shooting her in the back of the head with a different firearm.

Lynch v. State 841 So. 2d 362, 366-368 (Fla. 2003).

When Lynch was indicted for the murders of Roseanne Morgan and her daughter, Leah Caday, he was also indicted on charges of armed burglary and kidnapping of Leah Caday. On October 19, 2000, Lynch pled guilty as charged and waived a jury for the penalty phase. The penalty phase was held January 8-12, 2001. The *Spencer* hearing was held February 6, 2001. On April 3, 2001:

> [t]he judge sentenced appellant to death for the murders of Roseanna Morgan and Leah Caday. He found three aggravating factors as to the murder of Morgan:

(1) the murder was cold, calculated, and premeditated ("CCP") (given "great weight"); (2) appellant had previously been convicted of a violent felony (given "moderate weight"); and (3) the murder was committed while appellant was engaged in committing one or more other felonies (given little weight"). As to the murder of Caday, the judge found (1) that the murder was heinous, atrocious, or cruel ("HAC") (given "great weight"); (2) that appellant was previously convicted of a violent felony (given "great weight"); and (3) that the murder was committed while appellant was engaged in committing one or more other felonies (given "moderate weight"). He also found one statutory and eight nonstatutory mitigators as to each murder. [FN5]

> FN5. The statutory mitigating factor found was that Lynch had no significant history of prior criminal activity (moderate weight). The eight nonstatutory mitigators were: (1) the crime was committed while defendant was under the influence of a mental or emotional disturbance (moderate weight); (2) the defendant's capacity to conform his conduct to the requirements of law was impaired (moderate weight); (3) the defendant suffered from a mental illness at the time of the offense (little weight); (4) the defendant was emotionally and physically abused as a child (little weight); (5) the defendant had a history of alcohol abuse (little weight); (6) the defendant had adjusted well to incarceration (little weight); (7) the defendant cooperated with police (moderate weight); (8) the defendant's expression of remorse, the fact that he has been a good father to his children, and his intent to maintain his relationship with his children (little weight).

Lynch v. State 841 So. 2d 362, 368 (Fla. 2003).

Lynch argued five issues on direct appeal:

(1) The trial court erred in finding the aggravating factor of HAC as to the murder of Caday;

(2) The trial court erred in finding the aggravating factor of CCP as to the murder of Morgan;

(3) The trial court's sentencing order is unclear as to the findings of the mental health mitigators;

(4) The death sentence is disproportionate; and

(5) Florida's death penalty is unconstitutional on its face and as applied.

Relief was denied as to all issues. *Lynch v. State* 841 So. 2d 362 (Fla. 2003).

The United States Supreme Court denied the Petition for Writ of Certiorari on October 6, 2003. *Lynch v. Florida*, 540 U.S. 867 (2003).

Lynch filed a Rule 3.851 motion for post-conviction relief on July 27, 2004, raising the following issues:

(1) Lynch was deprived of an adversarial testing due to ineffective assistance of counsel at the guilt phase.

(a) Failure to object or move to dismiss Count 3;

(b) Failure to advise Lynch of defenses;

(c) Failure to advise Lynch a plea automatically established aggravating circumstances;

(d) Failure to investigate and advise Lynch on mitigation;

(e) Failure to suppress evidence seized at Lynch’s residence;

(f) Failure to consult a firearms expert and advise Lynch on accidental discharge of a firearm;

(g) Failure to investigate the relationship of Greg Morgan, Roseanna and Leah's relationship with each other and with Lynch;

(h) Failure to advise Lynch of the spousal privilege as it affected his suicide letter;

(i) Failure to ensure an adequate factual basis at the plea hearing;

(2) Lynch was deprived of an adversarial testing due to ineffective assistance of counsel at the penalty phase.

(a) Failure to advise Lynch on the waiver of a penalty phase jury;

(b) Failure to investigation mitigating circumstances;

(c) Failure to ensure a competent mental health evaluation;

(d) Failure to suppress evidence pursuant to a search of Lynch's residence;

(e) Failure to present the defense of accidental discharge of firearm and effectively cross-examine the state gun expert;

(f) Failure to investigate the relationship of Greg Morgan, Roseanna and Leah's relationship with each other and with Lynch;

(g) Failure to advise Lynch of the spousal privilege as it affected his suicide letter;

(h) Failure to effectively cross-examine Dr. Riebsame;

(i) Cumulative error.

(3) Incompetent mental health assistance pursuant to *Ake v. Oklahoma*, 470 U.S. 68 (1985);

(4) The State violated *Brady v. Maryland*, 373 U.S. 83 (1963);

(5) The State violated *Giglio v. United States*, 405 U.S. 150 (1972);

(6) Lynch's guilty plea was not knowing and voluntary;

(a) Failure to advise Lynch of defenses;

(b) Failure to advise Lynch a plea automatically established aggravating circumstances;

(c) Failure to ensure an adequate factual basis at the plea hearing;

(7) The State lost or destroyed exculpatory evidence;

(8) Newly-discovered evidence renders the State mental health expert's opinion unreliable.

An evidentiary hearing was held July 25-30, 2005. Relief was denied on April 3, 2006. An order clarifying the prior order was entered April 10, 2006. Lynch moved to disqualify the trial judge on April 13, 2006, and filed a Motion for Rehearing on April 18, 2006. The motion to disqualify was denied on April 21, 2006, and Lynch filed an Emergency Writ of Prohibition in this Court. Florida Supreme Court Case No. SC06-721. This Court denied the writ on July 11, 2006, and on October 29, 2006, the trial court entered a Second Amended Order Denying Motion for Post-Conviction Relief (Rule 3.851) and Order on Defendant's

Motion for Rehearing. An appeal from that order is pending before this Court in Case No. SC06-2233.

ARGUMENT

CLAIM I

LYNCH WAS NOT DENIED EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL

Lynch raises several allegations of ineffective assistance of counsel on direct appeal, all dealing with the factual basis for the plea. He alleges there was no factual basis for the plea, and the facts stated by defense counsel as the basis for the offenses was insufficient to establish the offenses.

This issue was raised in the Motion for Postconviction Relief, the denial of which is currently pending before this court as various claims of ineffective assistance of trial counsel. *See* Claim I in Case No. SC06-2233. To the extent that Lynch is attempting to use this habeas petition as a substitute for, or an additional appeal of his postconviction motion, this Court should deny relief. See *Rodriguez v. State*, 919 So. 2d 1252 (Fla. 2005); *Hardwick v. Dugger*, 648 So. 2d 100, 105 (Fla. 1994).

This Court reviewed the plea on direct appeal and found:

> Prior to determining the appropriateness of his sentence, this Court must examine the sufficiency of the evidence underlying the conviction. Here, the appellant pled guilty to two counts of first-degree premeditated murder, one count of armed burglary of a dwelling, and one count of kidnapping. When a

defendant has pled guilty to the charges resulting in a penalty of death, this Court's review shifts to the knowing, intelligent, and voluntary nature of that plea. *See Ocha v. State*, 826 So. 2d 956 (Fla. 2002). "Proper review requires this Court to scrutinize the plea to ensure that the defendant was made aware of the consequences of his plea, was apprised of the constitutional rights he was waiving, and pled guilty voluntarily." *Id*. at 965. The record in this case contains substantial evidence which shows that the underlying guilty plea was knowing, intelligent, and voluntarily made. The trial judge conducted the following colloquy with the defendant:

The Court: . . . Mr. Lynch, is that what you want to do, enter a plea of guilty to those charges?

Mr. Lynch: Yes, Your Honor.

The Court: Have you read everything on this plea form?

Mr. Lynch: Yes, I have.

The Court: Do you understand everything on the plea form?

Mr. Lynch: Yes.

The Court: Do you have any questions about anything on the plea form?

Mr. Lynch: No. I've talked it over with my counsel.

The Court: Is everything on the plea form true?

Mr. Lynch: Yes.

. . . .

The Court: You can read, write, speak and understand the English language?

Mr. Lynch: Yes.

The Court: Are you in good physical and mental health?

Mr. Lynch: Yes, as far as I know.

The Court: Have you had any drugs or alcohol in the last twenty-four hours?

Mr. Lynch: No, other than what the jail has prescribed for me, just some antidepression sleeping pill.

The Court: Okay. Do you feel that your mind is clear and you know exactly what you're doing this morning?

Mr Lynch: Yes, Your Honor.

The Court: Do you believe you're capable of exercising your best judgment today?

Mr. Lynch: Yes.

. . . .

The Court: Do you understand that the maximum penalty you could receive in this case would be either life in prison without parole, or the death penalty; do you understand that?

Mr. Lynch: Yes, I do.

The Court: Do you understand that a plea of not guilty denies the truth of the charge, and a plea of guilty admits the truth of the charge?

Mr. Lynch: Yes.
The Court: You have the right to have a trial by jury to see, hear, face and cross-examine the witnesses against you in open court, and the subpoena power of the Court to call witnesses in your behalf. You have the right to testify at trial, or remain silent, and your silence cannot be held against you. You have to the right to be represented by lawyers at the trial. But if you enter a plea of guilty, you'll waive that right and give up those rights and there will be no trial; do you understand that?

Mr. Lynch: Yes, Your Honor.

The Court: Do you want to give up those rights?

Mr. Lynch: Yes.

> . . . .
>
> The Court: Has any person threatened you or coerced you into entering this plea?
>
> Mr. Lynch: No.
>
> The Court: Has any person promised any leniency or any reward to get you to enter this plea, other that's what has been said here in open court here today?
>
> Mr. Lynch: No.
>
> The Court: Has there been any off the record assurances made to you by your lawyers or by anyone else?
>
> Mr. Lynch: No.
>
> The Court: Are you sure about your answers that you've given me this morning?
>
> Mr. Lynch: Yes, Your Honor.
>
> Further, after the judge read the charges to the defendant, the colloquy continued:
>
> The Court: Do you understand those are the charges? Mr. Lynch: Yes, Your Honor. The Court: Are you guilty of those charges? Mr. Lynch: Yes.
>
> Clearly the appellant understood the charges and pled to them voluntarily. The evidence here is sufficient to support that the guilty plea underlying the convictions was given knowingly, intelligently, and voluntarily.

Lynch v. State, 841 So. 2d 362, 376-377 (Fla. 2003).

Lynch attempts to challenge the facts underlying the plea but ignores fact findings from this Court on direct appeal. When analyzing the aggravating circumstances, this Court stated:

> An examination of the evidence, along with the natural and proper common-sense inferences, establishes that Caday suffered enormous fear, emotional strain, and terror immediately prior to her death. The appellant admitted terrorizing this thirteen-year-old child by holding her hostage at gunpoint prior to shooting her mother and then turning the weapon on her. The appellant himself admitted to the 911 operator, whom he called following the shootings, and to the police in his post-arrest interview, that he held Caday at gunpoint in her home for thirty to forty minutes waiting for Morgan to arrive. [FN6] Lynch told the 911 operator that "the daughter was just terrified. She says why are you doing this to me." When he spoke to the police negotiator prior to his arrest, Lynch used the term "petrified" to define Caday's emotion at the time of the incident. In his post-arrest interview, Lynch admitted having his firearm in his hand when he told Caday to sit down inside the apartment. Lynch himself said, "She was afraid." When asked whether he was holding Caday hostage, Lynch replied, "I guess technically in a way of speaking . . . ." The appellant's wife confirmed that when the appellant called her during the time he was holding Caday hostage "[t]here was a lady in the background screaming." Appellant's wife further testified that the screaming woman sounded "very, very upset." Clearly, Caday was terrified during the thirty to forty minutes prior to her death when she was being held hostage by Lynch. Also significant in this analysis are the events immediately preceding Caday's death after her mother arrived at the apartment. Lynch admitted to the police negotiator that after holding Caday hostage for thirty to forty minutes, Morgan arrived at the apartment, Lynch confronted her and shot her in the leg, then dragged her into the apartment. He admitted the same to the 911 operator: "She had a couple of body hits. . . . I dragged her back inside so I could talk to her." In his post-arrest interview Lynch admitted shooting Morgan several times in front of her daughter, Caday.
>
> > FN6 This fact is also supported by the appellant's guilty plea to the charge of kidnapping Leah Caday.

Lynch v. State, 841 So. 2d 362, 370 (Fla. 2003).

Lynch argues, as he did in Claim I in Case No. SC06-1550, the Rule 3.850 appeal pending before this Court, that there was no evidence of asportation, ignoring that the State charged Lynch with kidnapping to terrorize. The above facts clearly establish terrorization. As to the burglary, there were fact findings that would also support that crime::

> Morgan's neighbor across the hall testified that she looked out of the peephole in her door after hearing the initial shots and saw Lynch dragging Morgan by the hands into the apartment. She further testified that Lynch knocked on the door to Morgan's apartment and said, "Hurry up, open the door, your mom is hurt." The neighbor testified that Morgan was screaming and was bloody from her waist down. Morgan's neighbor further observed the door being opened, Lynch entering and closing the door behind him, and approximately five minutes later hearing three more gunshots. A second neighbor in the apartment complex also testified that approximately five to seven minutes after she heard the initial shots, she heard three more gunshots.

Lynch v. State, 841 So. 2d 362, 371 (Fla. 2003). Thus, even if the initial entry of Lynch was consensual, the second entry was not, and burglary is established.

As to premeditation for Roseanne's murder, this Court upheld the finding of cold, calculated, premeditated, finding:

> This Court has held that execution-style killing is by its very nature a "cold" crime. *See Walls v. State*, 641 So.2d 381, 388 (Fla. 1994). In *Looney*, this Court noted the significance of the fact that the victims were bound and gagged for two hours, and thus could not offer any resistance or provocation. 803 So. 2d at 678. Further, the defendants in that case had "ample opportunity to calmly reflect upon their actions, following which they mutually decided to shoot the

victims execution-style in the backs of their heads." *Id*.

Similarly, Lynch's killing of Morgan evinces the element of "cold" necessary for a finding of CCP. Lynch himself admitted to the 911 operator, the police negotiator, and the police in his post-arrest interview that he shot Morgan in the back of the head, killing her. Having already been shot at least four times prior to a final shot to the head, and knowing that her daughter was still in the apartment, Morgan did not offer any resistance or provocation. Further, witnesses reported a five- to seven-minute delay between the initial shots and the final three after Morgan had been wounded in the initial confrontation. During this time, Lynch had the opportunity to withdraw or seek help for Morgan by calling 911; instead he calculated to shoot her again, execution-style. Despite Lynch's subsequent attempted self-serving rationalization that he only wanted to put her out of her misery, the appellant's execution-style murder of Morgan clearly satisfies the "cold" element of CCP.

As to the "calculated" element of CCP, this Court has held that where a defendant arms himself in advance, kills execution-style, and has time to coldly and calmly decide to kill, the element of "calculated" is supported. *See Hertz v. State*, 803 So.2d 629, 650 (Fla. 2001); *see also Knight v. State*, 746 So.2d 423, 436 (Fla. 1998). Here, Lynch possessed three handguns as he traveled to Morgan's apartment where, after shooting her at least four times near the entrance, he then waited approximately five to seven minutes before shooting her again in the back of the head, execution-style. Lynch clearly had time to reflect upon these events before firing the final shots; in fact he purposely used a different weapon to shoot her in the head than he had used to inflict the initial wounds. *See Ford v. State*, 802 So.2d 1121, 1133 (Fla. 2001) (finding CCP where defendant used three different weapons and had to stop and reload prior to shooting each victim execution-style). Clearly, in this case a finding of the "calculated" element was proper.

The third element, "heightened premeditation," is also supported by competent and substantial evidence. This

> Court has "previously found the heightened premeditation required to sustain this aggravator where a defendant has the opportunity to leave the crime scene and not commit the murder but, instead, commits the murder." *Alston v. State*, 723 So.2d 148, 162 (Fla. 1998); *see also Jackson v. State*, 704 So.2d 500, 505 (Fla. 1997). In *Alston*, this Court upheld a trial court's finding of CCP where the defendant had ample time to reflect upon his actions and was not under the influence of alcohol, drugs, or the domination or pressure of another person. *Alston*, 723 So.2d at 161; *see also Dennis v. State*, 817 So.2d 741, 765 (Fla. 2002)(upholding CCP where facts showed defendant arrived at apartment before victim and waited for her arrival), *cert. denied*, 123 S.Ct. 604, 154 L.Ed.2d 527, 71 U.S.L.W. 3388 (2002). Similarly, Lynch had the opportunity to leave the crime scene and not kill Roseanna Morgan. As in Dennis, Lynch arrived at Morgan's apartment and waited for thirty to forty minutes for her to arrive. During this time, regardless of what his intentions may have been prior to Morgan's arrival, Lynch had ample opportunity to leave the scene. Further, after initially shooting Morgan and then dragging her into the apartment, Lynch had five to seven minutes in which he could have left the scene and not inflicted the final harm. Despite this time to reflect, Lynch chose to shoot Morgan in the head, execution-style, killing her. The evidence of Lynch's actions competently and substantially supports "heightened premeditation."

Lynch v. State, 841 So. 2d 362, 372-373 (Fla. 2003). Clearly the murder of Roseanne as premeditated.

As to the murder of Leah, the factual basis cited in the habeas petition shows that, according to Lynch, Leah simply got in the way when he was trying to kill Roseanne. Under the doctrine of transferred intent, this would be premeditated murder. Further, Lynch was guilty of first-degree felony murder as to Leah. As cited above, there was abundant evidence to

support both the kidnapping and burglary, either one of which would form the basis for felony murder. In any case, these arguments repeat those in the Rule 3.850 appeal currently pending before this Court, and should be denied.

An additional ground for denial is that these grounds have no merit. When analyzing the merits of the claim, "the criteria for proving ineffective assistance of appellate counsel parallel the *Strickland* standard for ineffective trial counsel." *Rutherford v. Moore,* 774 So. 2d 637, 643 (Fla. 2000) (*quoting Wilson v. Wainwright*, 474 So. 2d 1162, 1163 (Fla. 1985)). Thus, this Court's ability to grant habeas relief on the basis of appellate counsel's ineffectiveness is limited to those situations where the petitioner establishes first, that appellate counsel's performance was deficient and second, that the petitioner was prejudiced because appellate counsel's deficiency compromised the appellate process to such a degree as to undermine confidence in the correctness of the result. *See id.* "If a legal issue 'would in all probability have been found to be without merit' had counsel raised the issue on direct appeal, the failure of appellate counsel to present the meritless issue will not render appellate counsel's performance ineffective." *Id.* Moreover, appellate counsel is not required to present every conceivable claim. *See Atkins v. Dugger*, 541 So. 2d 1165, 1167 (Fla. 1989) ("Most successful appellate

counsel agree that from a tactical standpoint it is more advantageous to raise only the strongest points on appeal and that the assertion of every conceivable argument often has the effect of diluting the impact of the stronger points.") *Davis v. State*, 928 So. 2d 1089, 1127 (Fla. 2005).

CLAIM II

WHETHER LYNCH IS COMPETENT TO BE EXECUTED IS NOT REVIEWABLE AT THIS TIME SINCE THERE IS NO ACTIVE DEATH WARRANT.

Lynch concedes this claim is not ripe for consideration at this time. (Habeas petition at 29). *See Thompson v. State*, 759 So. 2d 650, 668 (Fla. 2000); *Provenzano v. State*, 751 So. 2d 37 (Fla. 1999); *Fla. R. Crim. P*. 3.811(d). This claim has no merit. *Johnson v. State*, 804 So. 2d 1218, 1225-1226 (Fla. 2001).

CLAIM III

THE STATE IS NOT REQUIRED TO ALLEGE THE AGGRAVATING CIRCUMSTANCES IN THE INDICTMENT

Lynch argues that the indictment was defective because the State failed to list the aggravating circumstances in the indictment. He does not raise ineffective assistance of appellate counsel, and does not argue this was fundamental error. This issue was not raised on direct appeal and is

procedurally barred. Further, it has no merit. As stated in *Rogers v. McDonough,* 957 So. 2d 538, 554 (Fla. 2007):

> Further, Rogers' argument that appellate counsel failed to argue the unconstitutionality of the sentence based on the failure of the indictment to allege aggravating circumstances is without merit. This Court has consistently held that neither *Apprendi* nor *Ring* requires that aggravating circumstances be charged in the indictment. *See Parker*, 904 So. 2d at 383; *Blackwelder v. State*, 851 So. 2d 650, 654 (Fla. 2003).

CLAIM IV

THERE IS NO ERROR, INDIVIDUAL OR CUMULATIVE

Because each of these alleged errors is either procedurally barred, without merit, or insufficient alone to justify a reversal, this claim should be denied. *See Rogers v. State*, 957 So. 2d 538, 555 (Fla. 2007).

CONCLUSION

Based upon the foregoing, the State requests respectfully that this Court deny habeas corpus relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. mail to **Marie-Louise Samuels Parmer, Nathaniel Plucker, and Maria DeLiberato**, Capital Collateral Regional Counsel, 3801 Corporex Park, Suite 210, Tampa, Florida 33619, this _____ day of October, 2007.

_____
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

_____
Of Counsel