

IN THE SUPREME COURT OF FLORIDA

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CASE NO.: SC07-1964  
LT CASE NO.: 96-1277

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DONALD BRADLEY  
Appellant,

vs.

STATE OF FLORIDA,  
Appellee.

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PETITION FOR WRIT OF HABEAS CORPUS

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RICHARD R. KURITZ, ESQUIRE  
Florida Bar No: 0972540  
200 East Forsyth Street  
Jacksonville, FL 32202  
Telephone: (904) 355-1999  
Facsimile: (904) 854-1999  
ATTORNEY FOR APPELLANT

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## **JURISDICTIONAL STATEMENT**

This is an original action under Fla.R.App.P. 9.100(a) and Art. I, Sect. 13. Fla. Const. This Court has original jurisdiction pursuant to Fla.R.App.P. 9.030(a)(3) and Article V, Section 3(b)(9), Florida Const. This petition presents constitutional issues which directly concern the judgment of this Court during the Appellate process and the legality of Petitioner's sentence of death.

Jurisdiction in this action lies in this Court, Smith v. State, 400 S.2d 956, 960 (Fla. 1981), for the fundamental constitutional errors challenged herein arise in the context of a capital case in which this Court heard but denied Petitioner's direct appeal. Wilson v. Wainwright, 474 So.2d 1163 (Fla. 1985); Baggett v. Wainwright, 392 So.2d 1327 (Fla. 1981).

A petition for a Writ of Habeas Corpus is the proper means for Petitioner to raise the claims presented herein. Way v. Dugger, 568 So.2d 1263 (Fla. 1990); Downs v. Dugger, 514 So.2d 1069 (Fla. 1987).

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 petition pleads claims involving fundamental constitutional error. Dallas v. Wainwright, 175 So.2d 785 (Fla. 1965); Palmer v. Wainwright, 460 So.2d 362 (Fla. 1984). Thus, the Court's exercise of its habeas corpus jurisdiction and of its authority to correct constitutional errors, such as those plead herein, is warranted.

## **PRELIMINARY STATEMENT**

Petitioner, Donald Bradley, was the Defendant below and the Appellant previously, and will be referred to as Petitioner, Defendant, Appellant, or Bradley. The State of Florida was the Prosecution below and the Appellee previously, and will be referred to as Prosecution, Appellee, or State. Appellate counsel, the object of this petition, will be referred to as such, or as simply “Counsel.”

For the purpose of this habeas petition, Petitioner shall make no reference to the supplemental record on direct appeal. The record consists of the primary record on appeal, spanning seventeen volumes, with pagination restarting at volume six. References thereto shall be in brackets, with a Roman numeral representing the volume number and Arabic numerals representing the respective page number. References to this Court’s opinion on direct appeal will be to the appropriate page in volume 787 of the Southern Reporter, Second Series. References to appellate counsel’s initial brief on the merits for the direct appeal will be in brackets, designated as “IB” with an appropriate page reference.

## **STATEMENT OF THE CASE**

This Court’s opinion in Bradley v. State, 787 So. 2d 732 (Fla. 2001) summarizes the proceedings of both the trial and direct appeal. Bradley filed an amended motion for postconviction relief pursuant to rules 3.850 and 3.851, Florida Rules of Criminal Procedure on 22 September 2003. The Circuit Court in

and for the Fourth Circuit, Clay County, denied the motion by order entered 14 June 2007. Bradley's appeal of that order also is pending before this Court at this time.

### **STATEMENT OF THE FACTS**

Error occurred during Petitioner's trial which was properly preserved for review on direct appeal, but which appellate counsel failed to include for review by this Court. Therefore, this petition presents questions that were not decided on direct appeal, but should now be visited pursuant to law and to correct error in the appeal process that denied fundamental constitutional rights. This petition will demonstrate that Petitioner is entitled to habeas relief.

### **SUMMARY OF ARGUMENT**

Trial counsel filed a plethora of motions challenging the constitutionality of Florida's death penalty scheme<sup>1</sup>. The trial court summarily denied all of these motions without argument from the State. Appellate counsel failed to challenge these denials on direct appeal, thereby rendering Counsel's performance ineffective, resulting in Petitioner's convictions and sentence of death.

Further, despite having challenged the sufficiency of the evidence of Defendant's guilt on direct appeal, Counsel failed to assign error to the trial court's admission of certain evidence. Counsel's failure rendered her sufficiency

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<sup>1</sup> Sections 921.141, 922.10, and 782.04 read together and applied as a conglomerate.

challenge incomplete and her performance ineffective, resulting in Petitioner's convictions and sentence of death.

Counsel's ineffective assistance has undermined confidence in the outcome of these proceedings to date. To preserve the integrity of Florida's death penalty scheme, this Court should vacate Petitioner's sentence of death and remand for a new trial, or for a new sentencing hearing.

### **STANDARD OF REVIEW**

The criteria for proving ineffective assistance of appellate counsel parallels the *Strickland* standard for ineffective assistance of trial counsel. Thus, the Court must consider:

first, whether the alleged omissions are of such magnitude as to constitute a serious error or substantial deficiency falling measurably outside the range of professionally acceptable performance and, second, whether the deficiency in performance compromised the appellate process to such a degree as to undermine confidence in the correctness of the result.

Zack v. State, 911 So. 2d 1190, 1204 (Fla. 2005) (internal citations omitted).

### **ARGUMENT**

**CLAIM I: WHETHER APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE TRIAL COURT'S DENIAL OF ANY AND ALL DEFENSE MOTIONS RESPECTING THE CONSTITUTIONALITY OF THE SUBSTANCE AND APPLICATION OF FLORIDA'S DEATH PENALTY SCHEME**

Trial counsel filed eight distinct motions challenging the constitutionality of



Florida's death penalty [I 14, 48, 78, 126, 147, 162, 183; II 313].<sup>2</sup> Regarding three of these motions [I 48, 147, 183]<sup>3</sup>, trial counsel filed related motions requesting evidentiary hearings and for costs related thereto [I 41, 86, 73], respectively. The trial court summarily denied all of these motions [III 478]. Five of the eight motions<sup>4</sup> alleged violations of amendments V, VI, VIII, and XIV to the United States Constitution. Each of the three other motions alleged violations of

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<sup>2</sup> Motions: to Declare Section 921.141(5)(i), Florida Statutes, Unconstitutional [I 14]; to Declare Section 921.141, Florida Statutes, Unconstitutional as Applied because of Arbitrariness in Jury Overrides and Sentencing [I 48]; to Declare Sections 782.04 and 921.141, Florida Statutes, Unconstitutional because of Treatment of Mitigating Circumstances [I 78]; to Dismiss to Declare Sections 782.04 and 921.141, Florida Statutes, Unconstitutional for a Variety of Reasons [I 126]; to Preclude Death Qualifications of Jurors in the Innocence or Guilt Phase of the Trial and to Utilize a Bifurcated Jury, if a Penalty Phase is Necessary [I 147]; to Declare Section 921.141(5)(d), Florida Statutes, Unconstitutional [I 162]; to Declare Sections 921.141 and 922.10, Florida Statutes, Unconstitutional because Electrocutation is Cruel and Unusual Punishment [I 183]; to Declare Section 921.141(5)(h), Florida Statutes, Unconstitutional [II 313].

<sup>3</sup> to Declare Section 921.141, Florida Statutes, Unconstitutional as Applied because of Arbitrariness in Jury Overrides and Sentencing [I 48]; to Preclude Death Qualifications of Jurors in the Innocence or Guilt Phase of the Trial and to Utilize a Bifurcated Jury, if a Penalty Phase is Necessary [I 147]; to Declare Sections 921.141 and 922.10, Florida Statutes, Unconstitutional because Electrocutation is Cruel and Unusual Punishment [I 183].

<sup>4</sup> to Declare Section 921.141(5)(i), Florida Statutes, Unconstitutional [I 14]; to Declare Section 921.141, Florida Statutes, Unconstitutional as Applied because of Arbitrariness in Jury Overrides and Sentencing [I 48]; to Dismiss to Declare Sections 782.04 and 921.141, Florida Statutes, Unconstitutional for a Variety of Reasons [I 126]; to Declare Section 921.141(5)(d), Florida Statutes, Unconstitutional [I 162]; to Declare Section 921.141(5)(h), Florida Statutes, Unconstitutional [II 313].

amendment XIV, to the United States Constitution, as well as amendments V<sup>5</sup>, VI<sup>6</sup>, and VIII<sup>7</sup>.

Trial counsel's argument in all of these motions facially warranted the relief requested. The Prosecution did not even respond to any of these motions, and the trial court failed to hear argument from the State at pre-trial hearings regarding these motions. Despite all this, appellate counsel failed to challenge any of the rulings regarding any of these motions on direct appeal.

Had any of the relief requested been granted, there is a reasonable probability that Petitioner would not have received a sentence of death. If the death penalty scheme or any of its parts as applied in Petitioner's trial had been found unconstitutional, then the sentencing proceedings *ipso facto* would have been different. If unconstitutional as a whole, then death would not even have been an option. If unconstitutional in part, especially those sections concerning aggravating circumstances<sup>8</sup>, then consideration by the jury and sentencing court

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<sup>5</sup> to Declare Sections 782.04 and 921.141, Florida Statutes, Unconstitutional because of Treatment of Mitigating Circumstances [I 78]

<sup>6</sup> to Preclude Death Qualifications of Jurors in the Innocence or Guilt Phase of the Trial and to Utilize a Bifurcated Jury, if a Penalty Phase is Necessary [I 147]

<sup>7</sup> to Declare Sections 782.04 and 921.141, Florida Statutes, Unconstitutional because of Treatment of Mitigating Circumstances [I 78]; to Declare Sections 921.141 and 922.10, Florida Statutes, Unconstitutional because Electrocutation is Cruel and Unusual Punishment [I 183]

<sup>8</sup> Sub-sections 921.141(5)(d), (h), and (i), challenged at [I 162, II 313, and I 14], respectively

respecting the sentence would not have warranted death: the balance of aggravating factors would have tipped toward a sentence of life.

Considering the failure of the State to oppose any of these eight motions of defense counsel regarding the constitutionality of Florida's death penalty scheme, the failure by appellate counsel to challenge on direct appeal the trial court's summary denial of any and all of these motions fell measurably outside the range of professionally acceptable performance. This deficiency in performance compromised the appellate process to such a degree as to undermine confidence in the correctness of the result: integrity in Petitioner's sentence of death is utterly lacking.

**CLAIM II: WHETHER APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE TRIAL COURT'S DENIAL OF DEFENSE MOTIONS REGARDING SUFFICIENCY OF THE EVIDENCE**

Appellate Counsel challenged on direct appeal the sufficiency of the evidence of Petitioner's guilt regarding the convictions for all three counts: first degree murder, conspiracy to commit first degree murder, and burglary [IB 43-59]. Counsel failed to assign error to two poignant orders of the trial court denying relief to Defendant regarding admissibility of evidence. Had this evidence been found inadmissible, there would have been insufficient evidence of Petitioner's guilt at trial. Despite challenging the sufficiency of the evidence, Counsel failed to

do so fully and competently by not challenging the admissibility of Defendant's phone records and statements to police officers.

### Phone Records

Trial counsel moved to suppress [II 363] and the trial court denied [I 482] the suppression of Defendant's illegally obtained phone records. These phone records were the most damning evidence of Defendant's participation in the conspiracy and of his presence at the scene at the time of the crime.

The trial court denied the motion on the grounds that the evidence had an alternate source of eventual discovery. This conclusion was speculative and warranted review on direct appeal. The cases cited by trial counsel in his motion were a convincing distillation of the law. Yet, appellate counsel failed to challenge the admissibility of this evidence on direct appeal.

Without the phone records, the Prosecution's case against Petitioner would have been considerably weaker, if not outright tenuous. His conviction would have been improbable, and appeal would not even have been necessary. Had this Court found the records incorrectly admitted at trial, reversal would have been warranted. Counsel's failure to challenge the admissibility of this evidence, therefore, constituted ineffective assistance. Petitioner was patently prejudiced by his resulting conviction and sentence of death.

Oral Statements on January 22, 1996

Trial counsel moved to suppress [II 359] and the trial court denied [III 471] suppression of certain statements made by Defendant to law enforcement while being questioned at his house. Although not as salient as the phone records, this evidence was corroborative of Defendant's guilt.

The trial court ruled that the circumstances surrounding Defendant's statements did not constitute violations of his rights under Amendments IV, V, and XIV to the United States constitution. This conclusion warranted review, as argument presented by trial counsel was for a just application of existing law to a new set of circumstances. Appellate counsel failed to challenge the admission of these statements on direct appeal, and Defendant's conviction and sentence were upheld.

For Counsel not to have bolstered her insufficiency argument with concurrent challenges to the use at trial of both of these categories of evidence rendered her challenge to the sufficiency of the overall evidence of Petitioner's guilt incomplete. This failure to challenge evidence rendered Counsel's performance ineffective, as competent counsel would have challenged said evidence in conjunction with the challenge to the overall sufficiency. Had Counsel challenged this particular evidence, the overall sufficiency of the evidence would

have been diminished and thereby lacking competence to uphold Petitioner's conviction and sentence.

### **CONCLUSION**

For all of the foregoing reasons, Petitioner requests that this Honorable Court vacate his sentence of death and remand for a new trial or new sentencing proceeding. The constitutional error alleged herein is of such magnitude as to undermine confidence in Petitioner's convictions and his sentence of death. This error still stands on the record because of Counsel's ineffective assistance on direct appeal, and this Court should grant the relief herein requested if there is to be any integrity in the applicability of Florida's death penalty scheme in Petitioner's case.

Respectfully submitted,

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RICHARD R. KURITZ, ESQUIRE  
Florida Bar No: 0972540  
200 East Forsyth Street  
Jacksonville, FL 32202  
Telephone: (904) 355-1999  
Facsimile: (904) 854-1999  
ATTORNEY FOR APPELLANT

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050, via U. S. Mail this \_\_\_\_\_ day of September, 2008.

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Brief is typed in Times New Roman font, and it is in size 14 font.

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RICHARD R. KURITZ, ESQUIRE  
Florida Bar No: 0972540  
200 East Forsyth Street  
Jacksonville, FL 32202  
Telephone: (904) 355-1999  
Facsimile: (904) 854-1999  
ATTORNEY FOR APPELLANT