

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC07-2008

MICHAEL JAMES JACKSON,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

_____ /

APPELLANT'S REPLY BRIEF

**On direct review from a decision of the Circuit Court of the
Fourth Judicial Circuit imposing a sentence of death**

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TABLE OF CITATIONS

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Turner v. California, 498 U.S. 1053 (1991). 1

PRELIMINARY STATEMENT

This reply brief is being filed to respond to some of the State's arguments. By filing this brief, Mr. Jackson does not waive any of the components of his initial brief. Additionally, by filing this reply brief, Mr. Jackson does not concede any of the factual assertions or arguments made by the State in its answer brief.

REPLY ARGUMENT

ARGUMENT 7: THIS COURT'S COMPARATIVE PROPORTIONALITY REVIEW OF SENTENCES OF DEATH IS UNCONSTITUTIONAL

This court has rejected this same claim in Hunter v. State, 2008 WL 4352655 at *16 (Fla., September 25, 2008).

To be clear, the defendant is not asking this Court to overrule Pulley v. Harris, 465 U.S. 37, 4-54 (1984). The defendant is merely arguing that the case should be overruled to preserve the issue for possible review in the United States Supreme Court. The defendant has not argued that this court should overrule it.

The defendant is also not relying solely on the ABA report for authority on this issue. The ABA report and the statistics contained therein is merely supplemental.

The backbone of the defendant's argument stems from the dissenting opinions in Tuilaepa v. California, 512 U.S. 967, 995 (1994) (J. Blackmun dissenting) and Turner v. California, 498 U.S. 1053 (1991) (J. Marshall dissenting from denial of certiorari), and the fact that death penalty schemes have evolved so

significantly since these cases were decided – and Florida lags behind in what protections the states must provide in a death penalty case.

CONCLUSION

For all the foregoing arguments and authorities, the Appellant/Defendant, MICHAEL JAMES JACKSON, respectfully requests this Honorable Court to reverse his convictions and release him forthwith or remand for a new trial/penalty phase, or reduce his sentence to life imprisonment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the OFFICE OF THE ATTORNEY GENERAL, Attn: Meredith Charbula, Esq., The Capital, PL-01, Tallahassee, Florida 32399-1050 on this 5th day of January 2009.

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with Times New Roman 14-point font in compliance with Fla.R.App.P. 9.210(a)(2) on this 5th day of January 2009.

RYAN THOMAS TRUSKOSKI, ESQ.
Appellate Attorney for Defendant