IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. WARREN STANG, Respondent.	Case No. SC09-1409

ON PETITION FOR REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

AMENDED INITIAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

This case originated out of Palm Beach County, Fifteenth Judicial Circuit. In 2000, Respondent pled guilty to 24 counts of racketeering, loan broker fraud and money laundering for crimes that had been committed throughout 1991-1994. Stang v. State, 937 So. 2d 1170, 1171 (Fla. 4th DCA 2006). He was sentenced to 5 years imprisonment followed by 3 years probation. Id. In 2005, after violating his probation, Respondent was sentenced to 27 years in prison. Id. On the first page of the sentencing order, the trial court awarded 1,915 days of credit based on past incarceration. (R:60) On the second page of the sentencing order, the trial court entered 1,915 days as the days of credit between arrest and sentencing but did not list a single count for which that credit should apply. (R:60) Respondent appealed his violation of probation, raising a scoresheet issue, and the Fourth District Court of Appeal affirmed. Stang, 937 So. 2d at 1172.

In his petition for writ of habeas corpus to Hardee County, Tenth Judicial Circuit, Respondent hypothesized that, the Department of Correction was confused about the credit awarded Respondent and sent a memo to the trial court to rectify the matter. (R:17) Respondent also hypothesized that it was this memo that caused the trial court to file an amended sentencing order removing the 1,915 from the second page. (R:17)

Respondent claimed that the trial court amended the sentence without notice to him or the State and while his direct appeal was pending. (R:17)

After Respondent's conviction and sentence was affirmed on direct appeal, Respondent filed a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 in Palm Beach County, Fifteenth Judicial Circuit. Respondent's motion for postconviction relief was summarily denied, and Respondent appealed. Stang v. State, 976 So. 2d 656 (Fla. 4th DCA 2008). The Fourth District denied all of Respondent's claims except one: incorrect credit for time served. Id. The Fourth District remanded for reconsideration on the merits, and the Fifteenth Judicial Circuit ordered the State to respond. (R:55) The State responded that only a total of 1,915 days were awarded at sentencing, not 1,915 days for each count, as Respondent was claiming. (R:57) The court denied the credit for time served claim. (R:65)

While this was occurring, Respondent used other avenues to test his claim. He used the prison grievance system; the Department of Corrections responded that they were following the trial court's order. (R:32-46) He filed a writ of habeas corpus in Okeechobee County. (R:48) His habeas was denied because his claim was based on the Department of Correction's failure to provide the correct number of credits and he had not

exhausted his administrative remedies. (R:48-50)

Eventually, Respondent was transferred to Hardee Correctional Institution, and he filed another habeas petition on June 26, 2008. (R:10) Respondent raised three claims in his Tenth Judicial Circuit habeas petition: 1) the amended sentence violated his rights to equal protection, due process and double jeopardy, 2) the Department of Corrections violated the Separations of Powers Act and 3) the trial court lacked jurisdiction to amend his sentence while his appeal was pending. (R:19) Respondent admitted that his postconviction motion credit for time served claim was the same issue raised in his Tenth Judicial Circuit habeas petition. (R:15-16) On July 14, 2008, the Hardee County, Tenth Judicial Circuit denied the petition because: 1) the complaint was properly addressed administratively by the Department of Corrections and 2) habeas corpus is not the appropriate remedy when a postconviction motion may be filed. (R:73-74)

On July 18, 2008, Respondent filed a petition for writ of certiorari to the Second District Court of Appeal alleging the Tenth Judicial Circuit incorrectly denied his habeas petition. (R:1) Instead of making a determination on the certiorari petition, the Second District converted the certiorari petition into a habeas petition and granted the petition, ordering Respondent's immediate release. Stang v. State, 34 Fla. L.

Weekly D1541 (Fla. 2d DCA July 31, 2009). The court held that Respondent was entitled to habeas relief because the amended sentencing order was void and illegal. Id. at D1542. First, the Second District found that the trial court could not amend the sentence when the case was on direct appeal unless a motion was filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Id. Next, the Second District held that Respondent had a due process right to be present when the trial court amended the sentence. Id. Finally, the court decided that the amended sentence rescinded jail credit that was previously awarded and, thus, violated double jeopardy. Id.

The State filed a motion to stay the mandate and the order for immediate release. After temporarily granting the stay for determination of the motion for rehearing, the Second District denied the stay. (R:99,122) The State motioned this Court for review of the denial of the stay. This Court granted the stay on August 14, 2009 and accepted jurisdiction on January 25, 2010.

SUMMARY OF THE ARGUMENT

All collateral attacks of judgments and sentences must be filed in the defendant's court of sentencing. This legal principle has been consistently upheld by this Court since the enactment of Rule 1 in 1963. In Stang v. State, the Second District ignored this Court's longstanding precedent and granted relief of a collateral attack of Respondent's sentence even though the Second District did not have jurisdiction over Respondent's sentencing court. 34 Fla. L. Weekly D1541 (Fla. 2d DCA July 31, 2009). The sentencing court is best situated to evaluate claims that collaterally attack judgments and sentences. Providing relief through a writ of habeas corpus in the jurisdiction of confinement and usurping the power of the sentencing court is improper. This Court should disapprove of the Second District's opinion and reaffirm its prior precedent.

ARGUMENT

ISSUE

WHETHER THE SECOND DISTRICT ERRED IN PROVIDING RELIEF FOR A CLAIM COLLATERALLY ATTACKING A JUDGMENT AND SENTENCE WHEN THE SENTENCING COURT WAS NOT LOCATED WITHIN THEIR JURISDICTION.

In Stang v. State, the Second District ignored this Court's longstanding precedent that collateral attacks of judgments and sentences must be filed in the sentencing court. 34 Fla. L. Weekly D1541 (Fla. 2d DCA July 31, 2009). Instead, the Second District, through its power to grant writs of habeas corpus to prisoners housed within its jurisdiction, ordered Respondent's immediately release on a collateral attack of a judgment and sentence. Providing habeas relief and usurping the power of the sentencing court was improper. This Court should reaffirm its prior precedent that collateral attacks of judgments and sentences are properly adjudicated by sentencing courts.

Issues of jurisdiction and venue are legal questions. Purely legal questions are reviewed de novo. Ellis v. Hunter, 3 So. 3d 373, 378 (Fla. 5th DCA 2009). Article V, section 4(b)(3) provides the district courts and article V, section 5(b) provides the circuit courts with jurisdiction over writs of habeas corpus. Habeas petitions must be filed in the court having territorial jurisdiction over the prison. Alachua Reg'l Juv. Det. Ctr. v. T.O., 684 So. 2d 814, 816 (Fla. 1996).

Motions pursuant to Florida Rule of Criminal Procedure 3.800 and 3.850 are filed in the circuit court of conviction and sentence. State v. Bryant, 780 So. 2d 978 (Fla. 5th DCA 2001).

Modern postconviction motion rules, originally called Rule 1, were enacted to coordinate the large number of habeas petitions that were expected following the United States Supreme Court's decision in Gideon v. Wainwright, 372 U.S. 335 (1963). Gene Brown, Collateral Post Conviction Remedies in Florida, 20 Fla. L. Rev. 306 (1968). The rule was "copied almost verbatim" from the federal motion to vacate sentence statute, 28 U.S.C. § 2255. Roy v. Wainwright, 151 So. 2d 825, 828 (Fla. 1963).

The federal statute was enacted to solve problems that had arisen in the administration of habeas corpus writs. United States v. Hayman, 342 U.S. 205, 210 (1952). The common law writ of habeas corpus was extremely narrow in scope because a conviction was proof itself of legal confinement. Id. at 211. In 1876, Congress expanded the common law to allow habeas writs for challenges to convictions. Id. at 211-12. This resulted in a huge increase in habeas petitions. Id. at 212. Filings were often repetitious and frivolous which was apparent to the sentencing court, but not the habeas court because documents would not be readily available to the court where the petitioner was confined. Id. Also, a disproportionate number of filings occurred in certain federal districts where a large number of

prisoners were housed. Id. at 213-14. Congress passed section 2255 to prevent abuse of habeas corpus petitions and to funnel petitions to the sentencing courts, titling them motions to vacate sentence. Id. at 215-18. The postconviction motion would be "in the nature of, but much broader than, coram nobis[,]" would "be as broad as habeas corpus[,]" and would "broadly cover all situations where the sentence is open to collateral attack[.]" Id. at 216-17.

Florida courts experienced many of the same problems as the federal courts; so it is no surprise the Judicial Council turned to the tried and tested federal statute when searching for solutions. For example, after the Gideon decision, 118 habeas petitions were filed in two weeks, compared to 300 the year before. Brown, supra, at 308. The goal of Rule 1 was to transfer postconviction collateral attacks of judgments and sentences from the habeas writ to the modern motion/rule based system. Baker v. State, 878 So. 2d 1236, 1239 (Fla. 2004). By funneling collateral attacks of judgments and sentences to sentencing courts, the rule simplified the process, created a covenant fact finding court and provided a uniform method of appellate review. State v. Bolyea, 520 So. 2d 562, 563 (Fla. 1988). Rule 1 was designed to provide a "complete and efficacious postconviction remedy to correct convictions on any grounds which subject them to collateral attack." Roy, 151 So.

2d at 828. Rule 1 procedures were conducted in the court best equipped to adjudicate collateral attacks: the sentencing court. Id. Rule 1 and its current progeny provide "the delicate balance necessary to protect both the right to habeas corpus relief in Florida and the institutional needs of the state courts system." Baker, 878 So. 2d at 1241.

After enactment of Rule 1, habeas corpus continued to apply in postconviction contexts not covered by Rule 1, for example, 1) constitutionality of conditions of confinement, see Van Poyck v. Dugger, 579 So. 2d 346 (Fla. 1st DCA 1991); 2) gain time and parole, see Forbes v. Singletary, 684 So. 2d 173 (Fla. 1996); 3) belated appeal, see Baggett v. Wainwright, 229 So. 2d 239 (Fla. 1969); and 4) effectiveness of appellate counsel, see Middleton v. State, 465 So. 2d 1218 (Fla. 1985). Both belated appeals and ineffective appellate counsel claims are now rule based (not filed as habeas petitions) and are filed in the appellate district of the sentencing court. Fla. R. App. P. 9.141(c). Currently, a proper habeas petition may be filed to address confinement issues, such as conditions of confinement, gain time and parole. See Broom v. State, 907 So. 2d 1261, 1262 (Fla. 3d DCA 2005) ("The circuit court of the county in which a defendant is incarcerated has jurisdiction to consider a petition for writ of habeas corpus when the claims raised in the petition concern issues regarding his incarceration, but not when the claims

attack the validity of the judgment or sentence.").

In noncapital cases, postconviction motions have "superceded" habeas petitions as the "only means" to raise collateral attacks of judgments and sentences. Washington v. State, 876 So. 2d 1233, 1234 (Fla. 5th DCA 2004).

> [W]ith limited exceptions, rule 3.850 is the mechanism through which [defendants] must file collateral postconviction challenges to their convictions and sentences. ... The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850.

Baker, 878 So. 2d at 1245. Habeas petitions cannot be used to address issues that could have or should have been raised in a postconviction motion. Roberts v. Dugger, 568 So. 2d 1255, 1261 (Fla. 1990).

> The enactment of Rule 3 merely provided a substitute remedy in place of habeas corpus in its former role as a vehicle to collaterally attack a judgment and sentence in Florida. To allow habeas corpus as a means of review of a conviction after direct appeal and subsequent to Rule 3 collateral attack and appeal therefrom would take away any measure of finality in criminal judgments and would be contrary to the intent of Rule 3.

State v. Broom, 523 So. 2d 639, 642 (Fla. 2d DCA 1988).

Rule 3.850 has specifically provided one exception for filing a habeas petition: when it appears a postconviction motion is "inadequate or ineffective to test the legality of...

detention." Fla. R. Crim. P. 3.850(h).

> When Rule 3 states that habeas may still be used if Rule 3 is "inadequate or ineffective" to test the legality of detention, it does not mean in areas in which Rule 3 is applicable (collateral attack of the judgment or sentence). Rather, habeas is still viable in areas in which Rule 3 does not apply at all because those matters do not involve a collateral attack of the judgment and sentence.

Broom, 523 So. 2d at 641. Rule 3.850 is extremely expansive and includes claims of newly discovered evidence and retroactive legal precedents. Fla. R. Crim. P. 3.850(b). Because of Rule 3.850's expansive application, Rule 3.850(h) logically applies to limited claims, namely confinement issues. All other claims previously covered by habeas petitions (collateral attack, belated appeal, ineffective appellate counsel) are now rule based claims and must be filed in courts having jurisdiction over the original trial. Thus, courts have jurisdiction over postconviction writs of habeas corpus would entertain claims involving prisoner confinement issues.

Postconviction motions limited the scope of relief available through postconviction writ of habeas corpus by removing collateral attacks from its purview. Other forms of habeas relief do not have such limitations. In Alachua Reg'l, supra, a juvenile pretrial detention case, this Court found that pretrial habeas jurisdiction was "limited to whether the court

that entered the order was without jurisdiction to do so or whether the order is void or illegal. The reviewing court may not discharge the detainee if the detention order is merely defective, irregular or insufficient in form or substance." 684 So. 2d at 816. The habeas jurisdiction recognized in Alachua Reg'l is encompassed by Rule 3.850(a) claims for relief. Rule 3.850(a) covers claims that the judgment was entered in violation of the Constitution or law of the United States or Florida, that a court did not have jurisdiction to enter judgments and sentences and that the judgment or sentence is subject to collateral attack. In fact, this Court explicitly recognized the inapplicability of Alachua Reg'l to postconviction cases: "This opinion should not be construed to supplant the requirements of Florida Rule of Criminal Procedure 3.850(h)[.]" Id. at 816 n.4. See also Murray v. Regier, 872 So. 2d 217, 222 (Fla. 2004). (recognizing that Rule 3.850 had "completely superseded habeas corpus" but remained a viable option for pretrial detention).

The Second District ignored the authority of the Fifteenth Judicial Circuit, in and for Palm Beach County, to adjudicate collateral attacks of its own judgments and sentences. All of the issues raised in Respondent's habeas petition could have, should have or were raised in his prior Rule 3.850 motion. Respondent claimed he was entitled to certain days of credit for

time served but the trial court provided him with less. This Court has previously determined that credit for time served issues involving disputes with the trial court's award can be filed as Rule 3.850 or Rule 3.800(a). State v. Mancino, 714 So. 2d 429, 430-31 (Fla. 1998). A habeas petition on a credit for time served issue is improper and should be denied. See Brown v. State, 745 So. 2d 1013 (Fla. 5th DCA 1999).

In making his credit for time served claim, Respondent argued that the trial court violated double jeopardy when filing an amended sentence and the trial court improperly changed the sentencing order outside the presence of a defendant. Double jeopardy claims can be raised on direct appeal and pursuant to a Rule 3.800(a) or 3.850 motion. Williams v. State, 957 So. 2d 600, 602-03 (Fla. 2007); Rudolf v. State, 851 So. 2d 839, 842 (Fla. 2d DCA 2003). Rule 3.850 is the proper vehicle when challenging presence for sentencing. See Poitier v. State, 844 So. 2d 707, 708-09 (Fla. 2d DCA 2003). Claims of jurisdiction to amend sentences can also be raised in postconviction motions. See Wolfson v. State, 437 So. 2d 174 (Fla. 2d DCA 1983).

Respondent admitted in his Tenth Circuit habeas petition that he previously raised the credit for time served issue in his Fifteenth Circuit postconviction motion. The doctrine of collateral estoppel prevents defendants from relitigating issues already decided in prior postconviction motions. State v.

McBride, 848 So. 2d 287, 290-91 (Fla. 2003). Collateral estoppel applies to habeas petitions. See Gamble v. State, 877 So. 2d 706, 720 (Fla. 2004) ("A habeas petition is not the proper vehicle to argue a variant of an already decided issue."); Fla. Parole & Prob. Comm'n v. Baker, 346 So. 2d 640 (Fla. 2d DCA 1977) (holding that a successive habeas petition should be denied if it contains the same subject matter and was previously denied). Respondent raised his credit for time served issue in two prior pleadings before finding relief in the Second District. Respondent raised the claim in his Fifteenth Circuit postconviction motion but failed to appeal to the Fourth District. Then, Respondent raised the claim, albeit improperly in the non-sentencing court, in his Tenth Circuit habeas petition. The Second District should have dismissed the habeas petition because two prior courts ruled on the same issue. See Pittman v. State, 8 So. 3d 1210 (Fla. 3d DCA 2009). The State submits the issue has also been waived by Respondent's failure to appeal his postconviction motion to the Fourth District. Cf. Beasley v. State, 18 So. 3d 473, 481 (Fla. 2009) (finding claims waived on appeal because not fully argued); Shere v. State, 742 So. 2d 215, 224 n.6 (Fla. 1999) (finding issues raised in postconviction motion not raised on appeal were waived).

Closer examination of the Second District's reasoning in Stang highlights the inappropriateness of usurping the

jurisdiction of the Fifteenth Judicial Circuit and, likewise, the Fourth District Court of Appeal. The Second District found that the Fifteenth Judicial Circuit could not amend the sentence when Respondent's direct appeal was pending or when he was not present; the Second District also found that removing jail credit violated double jeopardy. For the Second District to reach these conclusions, it had to assume that Respondent's claim of credit for time served was both legal and factually possible. This assumption is faulty.

The sentencing order (before it was amended) provided for 1,915 days on two pages. On the second page, the order leaves blank the designated space for writing in which counts to apply the credit. In order to provide credit, that space must contain the correct counts. Respondent claims that this blank space means that the 1,915 days applies to each count.[1] The State submits that the 1,915 days applies to no counts and was a typo that was mistakenly placed into the order. It also seems logically unlikely that Respondent received 1,915 days of total prior incarceration and the exact same number of days (1,915) for a period of incarceration between the day he was placed in

[1] Respondent's claim is also impossible. He is claiming 1,915 days of credit on 9 counts, for a total of 17,235 days of prior incarceration. Even if Respondent was incarcerated on the first day of January, 1994 and was in jail every day until he was sentenced on March 30, 2005, he would still only be entitled to 4,104 days of credit.

jail on the violation of probation and the day he was sentenced. Since the most likely explanation is that the 1,915 was a typo, and such an explanation was confirmed by the trial court's amended sentencing order, Respondent's claim was without merit.

In addition to the factual impossibility of Respondent's claim, Respondent could not legally receive his credit for time served in the way he was claiming. Respondent received a combination of consecutive and concurrent sentences. The lead count in his sentences was count 44, which was concurrent to count 65 and consecutive to all other counts. A defendant may receive credit for time spent in county jail on concurrent sentences. Gillespie v. State, 910 So. 2d 322, 324 (Fla. 2005). A defendant does not receive credit on consecutive sentences. Hipp v. State, 509 So. 2d 1208, 1210 (Fla. 4th DCA 1987); Miller v. State, 297 So. 2d 36, 38 (Fla. 1st DCA 1974). Likewise, a defendant who violates probation on multiple consecutive counts only receives credit for time served on the entire sentence, not on each individual count. Hodgdon v. State, 789 So. 2d 958, 963 (Fla. 2001), cited in, State v. Matthews, 891 So. 2d 479, 486 (Fla. 2004) (analyzing probation violation and credit for time served). Legally, Respondent could only receive the original 1,915 days of total credit awarded by the trial court. Anything greater would provide a "boon" or "windfall" to Respondent, which this Court sought to prevent in Hodgdon. Respondent's

credit should remain what he is currently receiving, and he is not entitled to immediate release.

The Second District also failed to consider the possibility that the Fifteenth Judicial Circuit was correcting a scrivener's error. A scrivener's error is a clerical or ministerial error in the written order that is at variance with the oral pronouncement of sentence. Ashley v. State, 850 So. 2d 1265, 1268 n.3 (Fla. 2003). The oral pronouncement of sentence controls over the written document because the written document is just a record of the actual pronouncement in open court. Id. at 1268. If the oral pronouncement conflicts with the written order, the written order is illegal, and the trial court must execute a new order. Williams, 957 So. 2d at 603. Whether the oral pronouncement is a higher sentence or the oral pronouncement is lower, the written order must conform to that oral pronouncement. See Comtois v. State, 891 So. 2d 1130 (Fla. 5th DCA 2005); Tory v. State, 686 So. 2d 689 (Fla. 4th DCA 1996). No sentencing transcript was provided with the habeas petition in the Second District. The trial court had access to the sentencing transcript and could compare the oral pronouncement to the sentencing order. The trial court was able to determine if the sentencing order was ambiguous or if it conformed to the oral pronouncement. The trial court decided to amend the sentencing order. It was in the best position to

review the whole record. The Second District, located in a separate jurisdiction, only had a piecemeal record without the sentencing transcript.[2]

The Second District's conclusion that the trial court could not amend the sentence order to clarify the credit for time served appears to rest on mistaken views of double jeopardy and credit for time served. The United States Supreme Court held that the Double Jeopardy clause does not extend to noncapital sentencing proceedings. Monge v. California, 524 U.S. 721, 724 (1998). Sentencing proceedings do not place a defendant in jeopardy in the same way a trial does. Id. at 728. This Court adopted the same rationale and determined that double jeopardy does not apply to resentencing. State v. Collins, 985 So. 2d 985, 992-93 (Fla. 2008). In Gallinat v. State, the Fifth District Court of Appeal specifically addressed the ability of a trial court to correct an erroneous award of too much jail credit. 941 So. 2d 1237 (Fla. 5th DCA 2006). The court found that a correction of jail credit will not implicate double jeopardy because it does not actually increase the sentence. Id. at 1241-42. The sentence remains the same and the amount of days previously served remains the same; the trial court merely

[2] The oral pronouncement of the sentence is a necessary part of the record because it is the official declaration of sentence. Williams, 957 So. 2d at 604. It is the defendant's burden to produce the sentencing transcript. Id.

fixes an order that reflected an incorrect amount of days previously served. Id.

Both legally and factually, Respondent's credit for time served, double jeopardy, and due process claims are meritless. Yet the Second District, without fully understanding the facts or the law in Respondent's case, provided him with relief. The original sentencing court had the records, transcripts and other documents available to properly address Respondent's claims. The sentencing court was in a better position to adjudicate the claims. For this reason, postconviction motions to collaterally attack judgments and sentences are filed in the sentencing court. The sentencing court maintains the record, has easier access to witnesses and is equipped to hold evidentiary hearings. The postconviction motion system also has the advantage of evenly distributing cases across Florida.[3] The rules for postconviction motions provide order into the system for collaterally attacking judgments and sentences.

In Stang, the Second District circumvented the

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[3] The prison system is not evenly distributed across Florida: 51,149 inmates are housed in the First District Court of Appeal, 9,614 inmates are housed in the Second District, 5,535 inmates are housed in the Third District, 6,998 inmates are housed in the Fourth District and 12,183 inmates are housed in the Fifth District. There are more inmates in the First District (51,149) then all other Districts combined (34,330). 2008-2009 Agency Statistics for the Department of Corrections, http://www.dc.state.fl.us/pub/annual/0809/facil.html (last visited Jan. 31, 2010).

postconviction motion system and provided another avenue for relief without appropriate jurisdiction. This case is already affecting the Second District when the court tries to properly transfer cases to the sentencing court. See Davis v. State, 2D09-2630 (Fla. 2d DCA January 22, 2010) (developing an absurd distinction between illegal and void sentences in order to distinguish Stang). The Stang decision also allows defendants to file habeas petitions to evade the postconviction motion system. The system was designed to manage collateral attacks of judgments and sentences. Creating a system for filing collateral attacks, but confusing defendants with rulings like this case, perpetuates frivolous filings because defendants believe that they can obtain relief.

CONCLUSION

Petitioner respectfully requests that this Court disapprove of the Second District's opinion in Stang and approve of this Court's prior precedents that place jurisdiction and venue of collateral attacks of judgments and sentences in the sentencing court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to David Luck, Esq., Carlton Fields, 4000 International Place, 100 Southeast Second Street, Miami, Florida 33131-2114 this ___ day of February, 2010.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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