IN THE SUPREME COURT OF FLORIDA
CASE NO. SC09-2417

WILLIAM K. TAYLOR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

Mark S. Gruber
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
813-740-3544
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ARGUMENT

The Appellant relies on the arguments presented in his Initial Brief. While he will not reply to every issue and argument raised by the Appellee, he expressly does not abandon the issues and claims not specifically replied to herein.

ARGUMENT I

THE CIRCUIT COURT ERRED WHEN IT DENIED MR. TAYLOR'S CLAIM THAT COUNSEL PROVIDED PREJUDICIAL INEFFECTIVE ASSISTANCE BY MISADVISING HIM ABOUT MOVING TO DISCHARGE HIS COURT APPOINTED COUNSEL.

Mr. Taylor argued in Argument I of his Initial Brief that the circuit court erred when it denied his claim that counsel provided prejudicial ineffective assistance by misadvising him about moving to discharge his court appointed counsel. Initial Brief of Appellant at 10-14. According to the Appellee, "[t]his claim is defeated factually because Taylor did not testify in support of his claim; he did not even establish that he ever wanted the court to discharge his attorneys or that he affirmatively relied on any misadvice in failing to file a motion to discharge counsel." Answer Brief of Appellee at 32.

Although Mr. Taylor did not testify at the postconviction evidentiary hearing, he made it abundantly clear in several letters that he wanted Mr. Skye and Ms. Goins to be removed from his case. On November 7, 2002, Mr. Taylor wrote

a letter to Julianne Holt, the Public Defender for the Thirteenth Judicial Circuit, in which he stated the following:

> Dear Ms. Holt,
>
> I'm writing to say that you need to pull Debra Goins and John Sky[e] off my case. They will not receive my cooperation at any time. Just as it started today when they came to see me. There is a "Conflict of Interest" now between your office and myself, and I do not believe I'd receive proper attention from anyone in your office after you there [sic] boss took the case from Debra Goins only to back out like a coward. There was no reason for you or Samantha Ward to file under the Coward Rule of 3.112. You should never have touched my case and all you did it for was the big Public following of the News and Newspaper would give you during the trial. But as soon as I say I wish to "Plead Guilty" you run like a whore to dick.
>
> Yes I tried to "plead guilty" yesterday but the judge would not accept it. But it isn't over with yet. Just like it isn't over between you the Bar and myself. You took my case from Debra Goins because it was gonna have a big news following through my trial. As soon as I stipulate I will "plead guilty" you jump ship. That's fine you never did a damn thing anyhow. It was always Ms. Ward.
>
> The only one in your office that was straight-forth was Ms. Kori Anderson.
>
> So inclusion [sic] I want the following from your office:
>
> 1. To turn over all records to me in every aspects [sic] (A) Doctor Reports, (B) All data collected for people to testify in Death Penalty phase! (C) All Investigation done by Ms. Kori Anderson.
>
> 2. For you to get your two puppets Debra Goins and John Sky[e] off my case.

> Because there definitely is a "Conflict of Interest" between your office and myself, in you handling my case. In plain English, get your office off my god-damn [case].
>
> Thank you for your time and I'll await your reply and my paperwork.
>
> William K. Taylor

PC-R. Vol. III, 544-45.

Mr. Taylor reiterated his desire for his attorneys to be removed from his case in a letter to Mr. Skye dated November 13, 2002:

> Mr. Skye,
>
> Please be advised that I do not want your representation, or any from that office! I'm also contacting all parties ask[ed] to testify in the Death Penalty Phase, not to do so! And do not put up any defense! I'll get this even if I have to contact the media to do so!
>
> I want to plead guilty to my charges as they stand, and that is with the Death Penalty intact. I'm fully aware of the serious charges against me. I am not stupid! I want to plead out as charged and all as I've said.
>
> So please do not make any trips to see me at any time in the weeks to come! Just get off my case and end the conflict I have with your office!
>
> Thank you and please do not bother me.
>
> William K. Taylor

PC-R. Vol. III, 547.

Even after Mr. Skye's December 5, 2002 letter to Mr. Taylor, in which he acknowledged Mr. Taylor's previous letters and addressed Mr. Taylor's dissatisfaction with the Public Defender's Office, Mr. Taylor continued to write letters expressing his desire to have Mr. Skye and Ms. Goins removed from his case, at times requesting that they do not contact him. For example, on February 3, 2003, Mr. Taylor wrote to Mr. Skye, "I will just say there was a give or take now there is nothing. Please let everyone know there is to be no communication between us." PC-R. Vol. III, 561. Six days later, on February 9, 2003, Mr. Taylor repeated in a letter to Mr. Skye, "I do not wish to see or talk to you about case preparation or anything else. So please do not come to the jail or talk to me in court because I will refuse to see you or to respond." *Id.* at 563. Mr. Taylor expressed further dissatisfaction with his attorneys and a desire to have them removed from his case in a letter to Ms. Holt dated March 2, 2003:

> Dear Ms. Holt,
>
> I am writing to inform you that I do not want your office to represent me on my case. It has already shown total disregard for the defendant[']s constitutional rights by "Waiving His Rights To A Fast and Speedy Trial" as follows:
>
> 1. Time would have run out in May 2002, but when you picked up my case you waived my right to a speedy trial in April.
>
> 2. Under the Interstate Compact I signed the State had till May

30th to try me on all charges.

3. The Detective was only deposed by half and the rest never done.

4. The lack of Mental Health Issues, not being explored.

5. Your office is trying to sabotage my case in all ways.

It is at this time that your office has used unethical ways to handle my case! I do not [want] a bunch of socialist and communist and corrupt officials handling my case.

William K. Taylor

Id. at 565-66.

Furthermore, the Appellee asserted that this claim was affirmatively refuted by Mr. Skye's description of trial counsel's relationship with Taylor as "cordial and productive," and Ms. Goins' testimony that her relationship with Mr. Taylor was "typically good." *Id*. at 35. In contrast to his trial attorneys' testimony, Mr. Taylor's letters suggest that his relationship with Mr. Skye and Ms. Goins was not so good. As discussed above, Mr. Taylor stated on several occasions that he did not wish to see his attorneys. He accused them of using unethical ways to handle his case, sabotaging his case, not exploring his mental health issues, interfering with his desire to plead guilty with the death penalty intact, not finishing a deposition, and waiving his right to a speedy trial without his consent. He referred

to his attorneys as "puppets" and "socialist and communist and corrupt officials." Additionally, trial counsel's testimony that when they met with Mr. Taylor in person he "was not difficult or confrontational" is in direct conflict with Mr. Taylor's statement in a December 30, 2003 letter to Ms. Holt that "[t]here has been an ongoing conflict between Counsel and Client for month's [sic] which has been on the verge of violent confrontations several times only held in check by the resolve of Mr. Taylor." PC-R. Vol. III, 575.

In conclusion, although Mr. Taylor did not testify in support of this claim, his letters document the difficulties he was having with his attorneys prior to trial and his strong desire to have them removed from the case. These letters demonstrate that Mr. Taylor felt that there was a conflict of interest in his case, and that he wanted the Office of the Public Defender to be removed from his case. Because his attorneys were unwilling to move to withdraw from Mr. Taylor's case, his only option would have been to request a *Nelson* hearing. Under *Nelson*, if Mr. Taylor made it appear to the trial judge that he wished to discharge his court appointed counsel, the trial judge would have been required to make an inquiry of Mr. Taylor as to the reason for the request to discharge. *Nelson v. State*, 274 So. 2d 256, 258. The Appellee relied on *Guardado v. State*, 965 So. 2d 108, 113-15 (Fla. 2007) for the proposition that "an inquiry is not available simply for the

asking but requires more than generalized complaints and statements of dissatisfaction with counsel." Answer Brief of Appellee at 34. The Court actually held the following in *Guardado*:

> Where a defendant seeks to discharge his lawyer on grounds of ineffective assistance, the trial court is required to make a series of inquiries. See *Hardwick v. State*, 521 So. 2d 1071, 1074-75 (Fla. 1988) (quoting *Nelson v. State*, 274 So. 2d 256, 258-59 (Fla. 4th DCA 1973)). However, any inquiry by the trial court can only be as specific as the complaints made by counsel. When the defendant makes generalized complaints about counsel, the trial court need not make a *Nelson* inquiry. See *Morrison v. State*, 818 So. 2d 432, 441 (Fla. 2002); *Sexton v. State*, 775 So. 2d 923, 930-31 (Fla. 2000); *Gudinas v. State*, 693 So. 2d 953, 962 n. 12 (Fla. 1997).

Guardado, 965 So. 2d at 113. Guardado aired his complaints about his penalty phase counsel to the court before the court determined that his complaints were not specific enough to warrant a *Nelson* hearing. *Guardado*, 965 So. 2d at 113-16. In contrast, Mr. Taylor, relying on Mr. Skye's advice, did not bring his concerns to the attention of the court. Therefore, because the court was not aware that Mr. Taylor wished to discharge his attorneys on grounds of ineffective assistance, the court did not make the required initial inquiry of Mr. Taylor in order to determine whether his complaints were specific enough to warrant a *Nelson* inquiry.

Given his strong feelings about having Mr. Skye and Ms. Goins removed from his case, and his failure to seek such a hearing, it is apparent that the

misadvice Mr. Skye provided to Mr. Taylor in his December 5, 2002 letter had a chilling effect on Mr. Taylor. As a result, he chose to retain counsel with whom he had a conflict of interest, and with whom there was apparently a breakdown in communication, as opposed to bringing this matter to the attention of the court and risking forced self-representation.

ARGUMENT II

THE CIRCUIT COURT ERRED WHEN IT DENIED MR. TAYLOR'S CLAIM THAT COUNSEL PROVIDED PREJUDICIAL INEFFECTIVE ASSISTANCE BY FAILING TO INVESTIGATE THE EFFECTS OF OVERMEDICATION.

Mr. Taylor argued in Argument II of his Initial Brief that the circuit court erred when it denied Mr. Taylor's claim that trial counsel provided prejudicial ineffective assistance by failing to investigate the effects of overmedication. Initial Brief of Appellant at 14-30.

As the Appellee acknowledged in their Answer Brief, despite trial counsels' testimony that "they never saw anything that indicated to them that he was over-medicated because he was always in control of his faculties, and he was never confused or incoherent", the circuit court found that "it is possible that at times Mr. Taylor may or may not have been over- or under medicated." PC-R. Vol. VI, 904-05. The circuit court's finding of fact that it is possible that Mr. Taylor may have been over-or under-medicated is entitled to deference because it is supported by

competent and substantial evidence. *Sochor v. State*, 883 So. 2d 766, 772 (Fla. 2004). Furthermore, no evidence was presented below that because a person seemed to be in control of his faculties and did not appear to be confused he was not over- or under- medicated. In fact, Dr. Merikangas testified that it is not always evident to a layperson when an individual is under the influence of medication. PC-R. Vol. XXXVIII, 4592. Therefore, trial counsels' observations of Mr. Taylor do not prove that he was not over- or under- medicated.

The Appellee discounted Dr. Merikangas' testimony from the evidentiary hearing because he was the only mental health expert to testify in postconviction who did not examine Mr. Taylor around the time of trial. Answer Brief of Appellee at 40. According to the Appellee, Dr. Sesta examined Mr. Taylor in 2002, and he did not corroborate Dr. Merikangas' opinion that Mr. Taylor was overmedicated, nor did he express any concerns about Mr. Taylor's prescription drug use prior to trial. Answer Brief of Appellee at 42. As the United States Supreme Court stated in *Indiana v. Edwards*, "Mental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual's functioning at different times in different ways." *Indiana v. Edwards*, 128 S.Ct. 2379, 2386 (2008). Postconviction relief may be warranted where the defendant's mental condition does not rise to the level of incompetence to stand

trial, but the defendant is mentally ill. *See Edwards*, 128 S.Ct. at 2380 (holding that "[t]he Constitution does not forbid States from insisting upon representation by counsel for those competent enough to stand trial but who suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves). Dr. Sesta saw Mr. Taylor only once in March 2002, more than two years before Mr. Taylor's trial, which began on June 2, 2004. PC-R. Vol. XXXV, 4163. Dr. Merikangas looked at the medications Mr. Taylor was taking throughout the time he was awaiting trial, as well as during the trial itself. As Dr. Merikangas testified to at the evidentiary hearing, Mr. Taylor's medications changed many times over the years that he was awaiting trial. Mr. Taylor's jail records indicate that the only medications Mr. Taylor was taking when he saw Dr. Sesta in March 2002 were Paxil and Dilantin, as opposed to five or more medications at later points leading up to his trial. PC-R. Vol. XXI, 3976-81; PC-R. Vol. XXXVIII, 4668. Therefore, while he may or may not have been experiencing the effects of overmedication early on in his incarceration, on the one day Dr. Sesta saw him, he was overmedicated at other points in time.

The Appellee cited the circuit court's finding that Dr. Sesta did not express any concern about Mr. Taylor's medications prior to trial, and none of the mental health professionals who saw Mr. Taylor prior to trial expressed any concern about

Mr. Taylor being overmedicated. Answer Brief of Appellee at 39; PC-R. Vol. VI, 905. However, in addition to Dr. Merikangas and Mr. Taylor himself, at least two mental health experts who saw Mr. Taylor prior to trial expressed concerns about Mr. Taylor's medications. Dr. Sesta noted that at the time he saw Mr. Taylor, he was taking anticonvulsant medications, which may have slowed his thinking process. PC-R. Vol. XXXV, 4198-99. A memorandum dated August 13, 2002 indicated that both Dr. McCraney and Mr. Taylor were concerned that Mr. Taylor's Dilantin level was too low. PC-R. Vol. XXII, 3983-86; PC-R. Vol. XXXVIII, 4585-86. Despite these indications that something was wrong with Mr. Taylor's medications, as well as the jail's failure to comply with a federal order directing that Mr. Taylor receive brand name Dilantin, trial counsel did not adequately or effectively enforce Mr. Taylor's right to receive the proper medication that was necessary to ensure his mental acuity and legal competency.

ARGUMENT III

THE CIRCUIT COURT ERRED WHEN IT DENIED MR. TAYLOR'S CLAIM THAT COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY CUTTING OFF PLEA NEGOTIATIONS.

In Argument III of his Initial Brief, Mr. Taylor argued that the circuit court erred when it denied his claim that trial counsel provided ineffective assistance by cutting off plea negotiations. Initial Brief of Appellant at 30-48. The Appellee

argued in their Answer Brief that "Taylor offered absolutely no evidence below to support his speculative conclusion that, had his attorneys performed differently, a plea to life in prison would have been offered and accepted." Answer Brief of Appellee at 50. In contradiction to this argument, in their answer to Argument III, the Appellee referred to "the critical events of March, 2004, when the case was nearly resolved with a plea." Answer Brief of Appellee at 44. In fact, as Mr. Taylor demonstrated in his Initial Brief, the case was nearly resolved with a plea in March of 2004. But for the ineffective assistance that trial counsel provided by cutting off plea negotiations, there is a reasonable probability that the State would have offered and Mr. Taylor would have accepted a plea to life in avoidance.

ARGUMENT IV

THE CIRCUIT COURT ERRED WHEN IT DENIED MR. TAYLOR'S CLAIM THAT COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO EMPLOY THE AID OF A MENTAL HEALTH EXPERT IN PLEA DISCUSSIONS WITH THE DEFENDANT.

In Argument IV of his Initial Brief, Mr. Taylor argued that the circuit court erred when it denied his claim that counsel provided ineffective assistance by failing to employ the aid of a mental health expert in plea discussions with Mr. Taylor. Initial Brief of Appellant at 48-57. The Appellee argued in their answer brief that Dr. Krop's assistance prior to trial included exploring a possible plea

deal. Answer Brief of Appellee at 55. In fact, Ms. Goins testified at the evidentiary hearing that Dr. Krop informed trial counsel that Mr. Taylor mentioned to him that he was interested in entering a plea to life in avoidance, and she assumed that Dr. Krop was speaking with Mr. Taylor about entering such a plea. PC-R. Vol. XXXVII, 4456-57. However, Dr. Krop saw Mr. Taylor only two times, on April 16, 2003 and January 15, 2004. PC-R. Vol. XIX, 3497. Dr. McCraney saw Mr. Taylor on August 13, 2002, and Dr. Sesta saw Mr. Taylor on March 7, 2002, years before the March 2004 trial. PC-R. Vol. XIX, 3590; PC-R. Vol. XXXV, 4176. Mr. Taylor's last and best chance of resolving the case with a plea, according to Ms. Goins, was in the weeks leading up to the March 15, 2004 trial. PC-R. Vol. XXXVII.

Although the Appellee echoed the circuit's finding that "the plea discussions were never firm enough to merit the involvement of a third party expert," it appears as though a an offer of a life in avoidance plea was, as Ms. Bondi informed Mr. Skye, under serious consideration, but the State was not willing to offer such a plea unless they knew that Mr. Taylor would be willing to accept such an offer. Answer Brief of Appellee at 54; 4455PC-R. Vol. XXXVI, 4330-31. As opposed to a situation where the State makes an offer and the defendant is able to consider that offer, Mr. Taylor was forced to consider the offer before it was actually made.

Therefore, in order to resolve this case with a plea, Mr. Taylor needed to decide to accept such an offer before that offer was actually made.

Trial counsel was aware of Mr. Taylor's history of mental health issues. In fact, at the time of his arrest for this case, Mr. Taylor was on federal probation for writing threatening letters to the President of the United States and a U.S. magistrate judge. PC-R. Vol. XIII, 2276. Ms. Goins testified that Mr. Taylor's psyche made it difficult for him to make decisions that were in his best interest. PC-R. Vol. XXXVII, 4457. Early on in the case, Mr. Taylor agreed with trial counsel that a plea to life in a avoidance would be in his best interest. PC-R. Vol. XXXVI, 4319. Given his past suicidal behavior, shifting moods, irritability, and changing his mind back and forth between wanting to plead guilty and wanting to take his case to trial, trial counsel should not have taken Mr. Taylor's statement on March 7, 2004 that he did not wish to accept a plea to life in avoidance as his final answer. Rather, trial counsel should have enlisted the help of mental health experts to explore whether Mr. Taylor's sudden desire to go to trial and reject a potential plea offer was a result of his mental illness or another suicide attempt. Even if, as Ms. Goins assumed, Dr. Krop spoke with Mr. Taylor about a life in avoidance plea, trial counsel did not enlist the help of mental health experts, including Dr. Krop, in speaking with their client during these critical weeks in March of 2004,

and they did not attempt to convince Mr. Taylor to agree to accept such an offer. PC-R. Vol. XXXVII, 4455-59; PC-R. Vol. PC-R. Vol. XXXVI, 4372. The ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases requires that defense counsel "at every stage of the case should explore with the client the possibility and desirability of reaching an agreed upon disposition." Guidelines at Guideline 10.9.1(B). Instead of continuing to explore the possibility of a negotiated plea, Mr. Skye unilaterally and abruptly terminated plea negotiations, despite Mr. Harmon's offer to continue to work with the victim's family and the trial court's offer to set a status date so that Mr. Taylor could have additional time to think about the offer. R. Vol. XI, 392-93.

ARGUMENT V

THE CIRCUIT COURT ERRED WHEN IT DENIED MR. TAYLOR'S CLAIM THAT COUNSEL PROVIDED PREJUDICIAL INEFFECTIVE ASSISTANCE BY FAILING TO INVESTIGATE AND PRESENT EVIDENCE REGARDING THE LINK BETWEEN HIS LOW LEVELS OF SEROTONIN AND HIS VIOLENT BEHAVIOR.

In Argument V of his Initial Brief, Mr. Taylor argued that the circuit court erred when it denied his claim that trial counsel provided ineffective assistance by failing to investigate and present evidence regarding the link between his low levels of serotonin and his violent behavior. Initial Brief of Appellant at 57-65. The Appellee argued in their Answer Brief that Mr. Taylor failed to establish that

"any reasonable attorney would have presented expert testimony on serotonin in mitigation," and is critical of the fact that, of the three cases cited in Mr. Taylor's initial brief to show that evidence regarding serotonin was being presented in other cases, only *State v. Odom*, 137 S.W. 3d 572 (Tenn. 2004) "presents a scenario where evidence of low serotonin levels was offered as mitigation." Answer Brief of Appellee at 61. In *State v. Filiaggi*, trial counsel also presented testimony regarding the defendant's low serotonin levels in support of the mitigating factor that "at the time of committing the offense, the offender, because of a mental disease or defect lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." *State v. Filiaggi*, 714 N.E. 2d 867, 885 (Ohio 1999). In other cases, trial attorneys have presented evidence of low serotonin levels during the guilt phase trial. *See*, *e.g.*, *People v. Salcido*, 44 Cal. 4th 93, 115 (Cal. 2008); *State v. Payne*, 2002 WL 31624813 (Tenn. 2002).

The Appellee also argued in their Answer Brief and the circuit court found that Mr. Taylor's attorneys made a reasonable strategic decision against presenting evidence regarding the link between Mr. Taylor's low levels of serotonin and his violent behavior. Answer Brief of Appellee at 58-64; PC-R. Vol. VI, 915. In support of this argument, the Appellee cited Mr. Skye's testimony that, "[w]hile a

large part of the defense case for mitigation was based on Taylor's alleged frontal lobe damage and the impact that had on Taylor's impulse control, Skye felt from a common sense standpoint the mitigation was not convincing due to the premeditated nature of the crime." PC-R. Vol. XXXVII, 4433. Mr. Skye's testimony at the evidentiary hearing is inconsistent with Ms. Goins' testimony that "this was a penalty phase that provided the opportunity explain a person's behavior" and that the issue of premeditation "hooked very well into the issue about impulsivity and the frontal lobe damage that we felt Taylor suffered from." PC-R. Vol. XXXVII, 4463, 4450. In the Defendant's Sentencing Memorandum, Ms. Goins cited Dr. McCraney's testimony that Mr. Taylor is impaired with respect to his ability to control his impulses in support of the two mental health statutory mitigating circumstances. R. Vol. VIII, 1298. Additionally, Mr. Skye's testimony is inconsistent with the Defense Motion for Judgment of Acquittal, in which Mr. Skye argued that the State had not presented a prima facie case of premeditation. R. Vol. III, 2172-87. Given that the defense strategy during the penalty phase was to explain Mr. Taylor's behavior, and that the serotonin evidence would have aided the defense in doing so, no reasonable explanation has been provided for not investigating and presenting this evidence.

ARGUMENT VI

THE CIRCUIT COURT ERRED WHEN IT DENIED MR. TAYLOR'S CLAIM THAT COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO ADVISE THE COURT ABOUT HIS RECENT HISTORY OF SEIZURES AND MEDICATIONS.

In Argument VI of his Initial Brief, Mr. Taylor argued that the circuit court erred when it denied his claim that trial counsel provided ineffective assistance by failing to advise the court about his recent history of seizures and medications. Initial Brief of Appellant at 65-72. The trial court stated the following in its 2004 Sentencing Order regarding Mr. Taylor's seizure disorder:

> In addition, the doctor [Dr. Krop] testified the Defendant suffered seizures probably as a result of a fall in 1981 and the Defendant had "been on Dilantin throughout most of his incarceration in the past." Actually, medical records from the Department of Corrections, reflected that the Defendant had not reported a seizure since 1989 and he had not been on anti-seizure medications since 1991. On cross examination, Dr. Krop conceded that a CT scan done in 1989 and another in 1991 showed no abnormality. The EEG done in 1991 was done by Dr. Mel Greer, a neurologist Dr. Krop "know[s] very well" and a leading expert in neurology, according to Dr. Taylor. That EEG indicated the Defendant had normal brain activity. From then until now there is no credible evidence to the contrary.

PC-R. Vol. IV, 637-38. In the opinion on direct appeal, this Court similarly held that the expert testimony conflicted as to whether Mr. Taylor suffered from a permanent seizure disorder. *Taylor v. State*, 937 So. 2d 590, 604 (2006).

In their Answer Brief, the Appellee argued, "In granting an evidentiary

hearing on this issue, the court below clarified that the comment in the sentencing order related to Taylor's mental state at the time of the offense (V4/626), and therefore evidence of seizures and medications after Taylor was arrested and in jail would not have affected this penalty phase finding." Answer Brief of Appellee at 65-66. Indeed, the trial judge correctly stated in her order granting an evidentiary hearing on this claim that she made the above statement while discussing the statutory mitigator of whether the Defendant was under the influence of extreme mental or emotional disturbance. PC-R. Vol. IV, 626. However, she also noted that "the Court is unable to conclusively determine whether it was aware of the 2001 seizures prior to imposing sentence." *Id.* at 626. Although the evidence in question regarding Mr. Taylor's recent history of seizures and medications involved events that occurred after the instant offense, it is relevant to Mr. Taylor's mental state at the time of the offense because it lends support to the conclusions that Mr. Taylor was suffering from a permanent seizure disorder, as well as brain damage.

Additionally, the Appellee argued that there was no testimony presented to demonstrate how Mr. Taylor's trial attorneys would have known that Mr. Taylor claimed to have had a seizure and was taking Dilantin about a month or so prior to the crime. Answer Brief of Appellee at 66. This information, however, was

documented in Mr. Taylor's records from the Hillsborough County Jail. An Interdisciplinary Transfer Summary dated July 6, 2001, indicated that Mr. Taylor had a history of seizures, that he was currently taking Dilantin, and that his last seizure was two weeks ago, which would have been shortly before the crime, which occurred on May 25-26, 2001.

The Appellee further argued that the June 8, 2000 Order from United States Judge Mary S. Scriven, which directed that Mr. Taylor receive Dilantin as opposed to the generic equivalent, was "known to the defense and in the defense file." Answer Brief of Appellee at 68. However, Ms. Goins, who was primarily responsible for the penalty phase, testified that she did not recall having seen the Order prior to the postconviction deposition, and if she had known about the Order at the time of trial, she would have introduced it into evidence, presented it to the judge, or had one of her experts testify about the Order. PC-R. Vol. XXXVII, 4462-63. Therefore, trial counsel did not make a strategic decision not to use the Order to contradict the trial court's finding that Mr. Taylor had not received treatment for seizures since 1991.

ARGUMENT VII

THE CIRCUIT COURT ERRED WHEN IT DENIED MR. TAYLOR'S CLAIM THAT COUNSEL PROVIDED PREJUDICIAL INEFFECTIVE ASSISTANCE WHEN THEY FAILED TO CALL DR. SESTA AS A WITNESS DURING PENALTY PHASE.

Mr. Taylor argued in Argument VII of his Initial Brief that the circuit court erred when it denied his claim that counsel provided prejudicial ineffective assistance when they failed to call Dr. Sesta as a witness during penalty phase. Initial Brief of Appellant at 72-97. The Appellee argued in their Answer Brief that "[t]he issue of whether or not to present Dr. Sesta as part of the mitigation case was discussed several times, and it was a mutual decision to go with McCraney and Krop and hold Sesta in abeyance." Answer Brief of Appellee at 74. However, both Mr. Skye and Ms. Goins testified at the evidentiary hearing that, although they discussed whether they should call Dr. Sesta, Ms. Goins is the one who ultimately made the decision not to call Dr. Sesta. PC-R. Vol. XXXVI, 4299; PC-R. Vol. XXXVII, 4468. Because Ms. Goins made the decision not to call Dr. Sesta, when evaluating whether the failure to present Dr. Sesta as a penalty phase witness was the result of a reasonable strategic decision, this Court should consider only Ms. Goins' reasons for not calling Dr. Sesta, and not the reasons cited by Mr. Skye.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Appellant has been furnished by United States Mail, first class postage prepaid, to all counsel of record and the Defendant on April 1, 2011**.**

Mark S. Gruber
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
Assistant CCRC
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
(813) 740-3544

Copies furnished to:

Carol M. Dittmar
Assistant Attorney General
Office of the Attorney General
Concourse Center 4
3507 East Frontage Road, Suite 200
Tampa, Florida 33607

William K. Taylor
DOC # 111640
Union Correctional Institution
7819 NW 228th Street
Raiford, Florida 32026

Scott Harmon
Assistant State Attorney
Office of the State Attorney
419 North Pierce Street
Tampa, Florida 33602

CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Initial Brief of Appellant, was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210 (a) (2).

_____

Mark S. Gruber
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
Assistant CCRC
CAPITAL COLLATERAL REGIONAL COUNSEL-MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
(813) 740-3544

Counsel for Appellant