IN THE SUPREME COURT OF FLORIDA

WILLIAM K. TAYLOR,

Petitioner,

v. **CASE NO. SC10-2169**

WALTER A. McNEIL,
Secretary, Florida
Department of Corrections,

Respondent.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Respondent, Walter A. McNeil, Secretary, Florida Department of Corrections, by and through the undersigned counsel, and hereby responds to the Petition for Writ of Habeas Corpus filed herein, pursuant to this Court's Order of November 9, 2010. Respondent respectfully submits that the petition should be denied as meritless.

FACTS AND PROCEDURAL HISTORY

Petitioner William K. Taylor was convicted of the first-degree murder of Sandra Kushmer, the attempted murder of William Maddox, and other related offenses; he was sentenced to death in 2004. This Court outlined the relevant facts in its opinion affirming the convictions and sentences imposed, Taylor v. State, 937 So. 2d 590, 592-97 (Fla. 2006):

On August 25, 2001, a grand jury returned an indictment for appellant William Taylor on one count of first-degree premeditated murder for the murder of Sandra Kushmer, one count of attempted first-degree murder for the attempted murder of William Maddox, one count of robbery with a deadly weapon, one count of robbery with a firearm, and one count of armed burglary of a dwelling.

At trial, Renata Sikes established that on Friday, May 25, 2001, she, along with her daughter Sandra Kushmer and her son William Maddox, went to visit her husband in the hospital. Kushmer and Maddox left the hospital in a rental car. At approximately 10:30 p.m. that night, Sikes called her home and spoke to Kushmer, who advised that "Ken" was there with Kushmer and Maddox,[FN1] and, according to Sikes, it sounded as though she was having fun. Thirty minutes later, Sikes again called home to inform her children that she would remain at the hospital, but there was no answer. Sikes called her home repeatedly thereafter, but the calls were never answered. At approximately 3:30 p.m. on Saturday, May 26, 2001, Sikes returned home. Upon arriving, Sikes noticed that the rental car was gone, and she observed blood on the outside of her house. In addition, Sikes discovered her daughter's medication, purse, and shoes lying outside on the ground. Upon entering the house, Sikes found Kushmer lying in a puddle of blood. As Sikes walked further into the house, she discovered Maddox lying on the bed in a back bedroom. Sikes observed that Maddox's face was black and blue, his pillow black with blood, but he was still alive. Sikes later determined that cameras belonging to her husband which had been stored in the closet of Maddox's room were missing.

[FN1] Taylor's middle name is Kenneth.

Cynthia Byrnes was working at Harry's Country Bar on the night of Friday, May 25, 2001, the night of these events. She saw Kushmer and Maddox enter the bar that night, while Taylor was also present. According to Byrnes, Maddox was drinking the most expensive liquor sold at the bar, paying for his drinks with twenty-dollar bills, and leaving good tips. Byrnes

testified that Maddox, Kushmer, and Taylor left the bar together.

On Saturday, May 26, 2001, Tommy Riley awoke to see Taylor on his doorstep. Later that morning, Taylor asked Riley to cash a $ 580 check, but Riley refused. The name on the two-party check was William Maddox, and it was from a bank in California, where Maddox lived. Later that evening, Taylor was in a bar where Riley worked as a bartender, paying for drinks with twenty-dollar bills. The following morning, Sunday, May 27, 2001, Riley was advised by an employee at Harry's Bar, where Taylor, Kushmer, and Maddox had been the night of the murder, that detectives were looking for Taylor. Riley conveyed this information to Taylor, and he immediately left Riley's house in his pickup truck.

The detective in charge of investigating these crimes obtained information that Maddox's credit cards had been used in Tampa, Florida; Valdosta, Georgia; and Memphis, Tennessee. Based on this information, she contacted the United States Marshal's Office in Tampa, which then relayed the information to the Marshal's Office in Tennessee. Deputy Marshal Scott Sanders of the Memphis office received the information on May 29, 2001, from the Tampa office that two warrants for Taylor's arrest for federal probation violations were outstanding and that Taylor might be in the Memphis area because he was believed to be in possession of credit cards that were being used in that location.

The Tennessee marshals located Taylor's pickup truck at a motel, and he was taken into custody. Sanders wanted to search Taylor's motel room at that time but he was unable to do so because he could not locate a Marshal's Office consent form. He then obtained a consent form from the Shelby County Sheriff's Office, added the words "and the U.S. Marshals Office" to the top of the form, and filled it out, writing in the motel name and the room number to be searched. Sanders explained the form to Taylor and told him the consent form was for his motel room. According to Sanders, Taylor did not express any hesitation in signing the form.

The search of Taylor's room revealed a checkbook wallet containing checks in the name of Bill Maddox, three credit cards issued to Maddox, credit card receipts, a ticket from a pawn shop in Memphis, a

Discover credit card issued to Sandra Kushmer, and a Texaco card issued to Barry Sikes, which Renate Sikes testified she had given to Kushmer. Receipts dated May 29, 2001, indicated that the Maddox credit card had been used to purchase a gold chain and a wedding band. The pawn shop ticket with the same date indicated that Taylor had pawned the two items.

When the lead Florida detective met with Taylor in Tennessee on May 30, 2001, she asked him for consent to search his truck. She read the applicable consent to search form to Taylor and he signed it. Taylor was then presented a consent to interview form which he also signed. The interview revealed that on Friday, May 25, 2001, Taylor called Kushmer and arranged a meeting at Harry's Bar. Taylor disclosed that early that evening, he encountered an unnamed individual who lived near the bar, and he told this individual that he (Taylor) wanted to rob the Sikes home. This other person also had an interest in participating in the crime. Later that evening, Maddox and Kushmer left the bar with Taylor and they went to the Sikes home. Taylor confirmed that after the trio had beer and sandwiches, Taylor and Kushmer left the house and traveled to another bar, where they remained until approximately 12:30 a.m. They then returned to the Sikes home. When they arrived, the individual with whom Taylor had previously discussed the crime was in the driveway. This individual struck Kushmer on the back of the head with a long black bar. Kushmer fell to the ground, and Taylor removed two credit cards from her purse. Taylor admitted that he then went into the Sikes home and discovered Maddox lying in a puddle of blood. Taylor described the scene as the other unnamed individual in the bedroom going through the dresser drawers and a jewelry box. According to Taylor, his partner in this crime heard a noise, checked outside, and advised Taylor that Kushmer was now sitting up against the house. Taylor stated that this other individual then took a shotgun that was leaning against the wall, telling Taylor, "I'm just going to hit her with it." While Taylor was removing the bag containing cameras from Maddox's room, he heard a gunshot and went to the back of the house, where this other individual stated that he had shot Kushmer. Taylor then carried Kushmer into the house and placed her on the floor. Taylor then fled from the

scene in his truck. The next morning, Taylor and Jose Arano went to Ybor City. Taylor said it was in a bar there that he used Maddox's credit cards to pay for drinks, and a card was also used to purchase food.

The day after the interview, the lead Florida detective searched Taylor's truck and found a black bag on the floorboard which contained cameras and camera accessories. The detective presented these items to Sikes, who identified them as belonging to her husband. The detective then went to a bar in Memphis at which Taylor had used the Maddox credit cards and spoke with Pamela Williams, who disclosed that Taylor had purchased drinks for her at the bar on the night of May 28, 2001, and introduced himself to her as William Maddox. She also showed the detective a note given to her by Taylor which he signed as "Bill Maddox" and identified himself as the owner of his own financial corporation.

After speaking with Williams, the detective returned to interview Taylor again. When Taylor was advised by the detective that she did not believe everything he had related the day before, Taylor told her the interview was over. However, Taylor continued to speak, and at one point, he said, "I shot her." The detective inquired if Taylor understood that he had terminated the interview and whether he wished to continue. Taylor replied that he did wish to continue. Taylor then changed his prior version of the events and stated that after Kushmer had been hit by the unnamed individual with him, Taylor armed himself with a shotgun from his truck. Taylor then stated that after he had burglarized the house and as he was leaving, he saw a movement and fired the shotgun in that direction. Taylor described that when he discovered that he had shot Kushmer, he carried her inside the house, placed her on the floor, threw the gun in the back of his truck, and immediately left. Taylor then stated that he pawned the shotgun and threw the clothes he was wearing in a dumpster.

Almost a month later, the lead Florida detective was informed that Taylor wished to again speak with her at the jail. When she arrived, Taylor gave the detective a letter that he had written which stated that during the earlier interviews, the detective had been "absolutely correct in [her] constant believing in the [unidentified] person being [Jose Arano]."

According to his letter, after Arano picked up Taylor's ex-wife, Lorena, Taylor instructed him to go to the Sikes home and hide in front of the house with Lorena. Taylor's letter disclosed that as Taylor and Kushmer approached the front of the house at approximately 1:20 a.m., Lorena came from her concealment and hit Kushmer with a crowbar. Taylor then removed Kushmer's keys from her purse, the three of them entered the Sikes home, and Taylor retrieved the shotgun from his truck. Taylor's letter stated that it was Arano who had beaten Maddox with the crowbar. According to the letter, Lorena then heard a noise outside. As Taylor went outside, someone turned the corner, and Taylor fired the gun in that direction. When he realized that it was Kushmer, he brought her inside the house. Taylor took the cameras, a couple of watches, and the keys to the rental car. Taylor and Arano drove away from the Sikes home in separate vehicles (with Lorena riding in Taylor's truck), and Taylor threw the car keys for the rental car in a ditch. The three stopped at a 7-11, where Arano cleaned the crowbar and placed it in Lorena's car. Taylor gave Lorena the money and the watches and advised her to go to Miami.

The medical examiner, Dr. Lee Miller, testified that the cause of Kushmer's death was a shotgun wound to the head that penetrated her arteries and veins, which caused her to bleed to death. Based on the available evidence, at the time of the shooting the shotgun had been pressed against Kushmer's mouth. The wound path was consistent with Kushmer having been in a sitting position. The medical examiner was of the opinion that Kushmer's wound was inconsistent with being shot by a person standing in the doorway of the house as she appeared around the corner. Additionally, the laceration on the back of Kushmer's head was consistent with being struck by the butt of a shotgun.

A blood spatter expert opined that the blood smears on the outside wall of the Sikes home were likely caused by Kushmer's bloody hair. Further, high-velocity blood spatter located to the left of the smears indicated that the spatter was caused by a gunshot wound. The impact site was consistent with a victim who had been shot in the mouth while sitting or kneeling at the time. The blood patterns inside the Sikes home were consistent with Kushmer's body having

been carried into the home and swung in an arc-like manner before being dropped on the floor.

Latent fingerprints were lifted from beer bottles found in the garbage at the scene. A fingerprint expert matched one latent fingerprint with the known print of Taylor's right index finger. The Hillsborough County Sheriff's Office collected the shotgun and the pawn ticket from the shop where Taylor had pawned the item. A different fingerprint examiner was of the opinion that a thumbprint on the pawn ticket from the shotgun transaction also matched the known fingerprints of Taylor. The Florida Department of Law Enforcement tested the shotgun, and two areas tested positive for blood. DNA testing on the blood from these two areas generated partial DNA profiles that matched the profile of Maddox at three and four genetic points.

After hearing the evidence, the jury rendered a verdict finding Taylor guilty of first-degree murder as to the death of Kushmer, attempted first-degree murder as to William Maddox, robbery with a deadly weapon as to Maddox, robbery with a firearm as to Kushmer, and armed burglary of a dwelling. During the penalty phase, the State presented the testimony of the victims of crimes from Taylor's prior convictions for burglary, first-degree assault, and possession of a deadly weapon during the commission of a felony, who described the circumstances surrounding the crimes. The parties also stipulated that at the time of the murder, Taylor was on federal felony probation. Victim impact statements prepared by Renate Sikes, William Maddox, and William Maddox, Sr. (Kushmer's father) were read to the jury.

During the penalty phase, the defense presented videotaped depositions of three witnesses and live testimony from three additional witnesses. Taylor's maternal aunt disclosed that his stepfather physically and mentally abused him and beat his mother. Josephine Quattrociocchi, who met Taylor in prison while visiting another inmate, was of the view that Taylor was a sincere and nice person. Taylor worked as a painter at one time, and his employer summarized that Taylor was an excellent worker, had initiative and a good work ethic, his work product was good, he could follow special instructions, and he did not require excessive supervision. A former counselor at Glades

Correctional Institution informed the jury that Taylor had completed a drug program that he operated, and afterwards Taylor became a facilitator who assisted inmates in the drug program.

The defense also presented mental health experts. One diagnosed Taylor as suffering from a cognitive disorder, with deficits related primarily to the frontal lobe. He also opined that Taylor met the criteria for Antisocial Personality Disorder and most of the criteria for Borderline Personality Disorder. This expert also noted that Taylor himself and medical reports indicated that Taylor suffered a traumatic brain injury by falling from a scaffold in or around 1981, and after that, Taylor began to have headaches and seizures. This expert ultimately concluded that Taylor has a chronic emotional disorder; i.e., frontal lobe syndrome, which was aggravated or exacerbated on the night of the murder by Taylor's extensive consumption of alcohol. Due to the circumstances of that evening and Taylor's frontal lobe syndrome, his judgment was compromised to the extent that his ability to conform his conduct to the requirements of the law was impaired.

A second expert diagnosed that Taylor had presented brain dysfunction in the form of frontal lobe impairment and evidenced impairment with regard to the formulation of intent and impulse control. He concluded that Taylor suffered from epilepsy, which is consistent with a traumatic brain injury, based on the history that Taylor relayed and the medical records which detailed Taylor's response to the antiseizure medication Dilantin.

A State expert responded to this mental health evidence and concluded that Taylor met the criteria for both Borderline and Antisocial Personality Disorders. In his view, while Taylor may have suffered seizures after the head injury that Taylor claimed to have suffered, there was no indication of a permanent seizure disorder. The State expert found no evidence of frontal lobe or temporal lobe impairment in Taylor, and he concluded that Taylor's reported head injury in the 1980s did not result in any permanent brain damage. This expert concluded that on the night of the murder, Taylor did not suffer from any mental disease or defect that substantially impaired his capacity to appreciate the criminal

nature of his conduct or his ability to conform his conduct to the requirements of the law.

After consideration of the evidence, the jury returned a recommendation of death by a vote of twelve to zero. During the *Spencer* [FN2] hearing, a defense mental health expert estimated that Taylor consumed ten beers and eight ounces of tequila and had smoked two or three marijuana joints on the day of the murder. He testified that Taylor's poor performance on tests that measure frontal lobe function was strongly indicative of frontal lobe damage and his neuropsychological deficits were more likely developmental in nature and likely preceded the head injury that Taylor suffered in the 1980s.

> [FN2] *Spencer v. State, 615 So. 2d 688 (Fla. 1993)*.

The trial judge sentenced Taylor to death for the murder of Kushmer. In pronouncing Taylor's sentence, the trial court determined that the State had proven the existence of three statutory aggravators: (1) the murder was committed while Taylor was on felony probation, *see § 921.141(5)(a), Fla. Stat.* (2001); (2) Taylor had previously been convicted of a felony involving a threat of violence to the person, *see § 921.141(5)(b), Fla. Stat.* (2001); and (3) the murder was committed for pecuniary gain, *see § 921.141(5)(f), Fla. Stat.* (2001). The trial court assigned each of these factors great weight. The court did not find that any statutory mitigators existed, but found a total of thirteen nonstatutory mitigating circumstances, two of which were assigned modest weight, six were assigned some weight, two assigned little weight, and three were assigned minimum weight. [FN3] In imposing a sentence of death, the trial court concluded that "[t]he aggravating circumstances in this case far outweigh the mitigating circumstances."

> [FN3] The trial court found the following nonstatutory mitigating circumstances: (1) Taylor was under some mental or emotional disturbance at the time of the crime (some weight); (2) psychological trauma due to abuse and neglect in formative years (some weight); (3) psychological trauma due to deprivation in

> parental nurturing (some weight); (4) stepfather provided no emotional or parental support (modest weight); (5) neurological impairments affecting ability to control impulses (some weight); (6) learning disabilities, attention deficit problems, and problems with social interactions (some weight); (7) obtained GED in prison (minimum weight); (8) attempts to address and recover from drug dependence (modest weight); (9) good worker and dependable employee (minimum weight); (10) agreed to be interviewed and cooperated with the police (minimum weight); (11) history of substance abuse dating back to pre-teen years (some weight); (12) under the influence of alcohol at time of crime (little weight); and (13) appropriate conduct during trial (little weight).

Taylor appealed his conviction and sentence to this Court. He was represented by Special Assistant Public Defender Andrea M. Norgard. He raised six issues in his 99-page brief:

> ISSUE I: THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS THE EVIDENCE SEIZED AS THE RESULT OF AN UNLAWFUL SEARCH.
>
> ISSUE II: THE SENTENCE OF DEATH IS DISPROPORTIONATE IN THIS CASE AS THIS IS NOT THE MOST AGGRAVATED AND LEAST MITIGATED OF MURDERS.
>
> ISSUE III: FLORIDA'S CAPITAL SENTENCING PROCESS IS UNCONSTITUTIONAL BECAUSE A JUDGE RATHER THAN JURY DETERMINES SENTENCE.
>
> ISSUE IV: THE EXISTENCE OF THE PRIOR VIOLENT FELONY AGGRAVATING FACTOR SHOULD NOT BAR THE APPLICATION OF RING TO DEATH SENTENCES.
>
> ISSUE V: THE PENALTY PHASE JURY INSTRUCTIONS UNCONSTITUTIONALLY SHIFT THE BURDEN OF PROOF TO THE DEFENDANT TO ESTABLISH MITIGATING FACTORS AND TO SHOW THAT THE MITIGATING FACTORS OUTWEIGH THE AGGRAVATING CIRCUMSTANCES.

ISSUE VI: THE PENALTY PHASE JURY INSTRUCTIONS IMPROPERLY MINIMIZE AND DENIGRATE THE ROLE OF THE JURY IN VIOLATION OF CALDWELL V. MISSISSIPPI.

This Court affirmed the judgments and sentences on June 29, 2006, and the mandate was issued on July 27, 2006. Taylor did not seek certiorari review. He filed a motion for postconviction relief in October, 2007, and an amended motion on February 15, 2008. The circuit court conducted an evidentiary hearing and thereafter denied relief on November 15, 2009. This petition was filed contemporaneously with the initial brief in the postconviction appeal, Taylor v. State, SC09-2417.

ARGUMENT IN OPPOSITION TO CLAIMS RAISED

Petitioner alleges that extraordinary relief is warranted because he was denied the effective assistance of appellate counsel. The standard of review applicable to ineffective assistance of appellate counsel claims mirrors the Strickland v. Washington, 466 U.S. 668 (1984), standard for claims of trial counsel ineffectiveness. See Valle v. Moore, 837 So. 2d 905 (Fla. 2002); Rutherford v. Moore, 774 So. 2d 637, 645 (Fla. 2000). Such a claim requires an evaluation of whether counsel's performance was so deficient that it fell outside the range of professionally acceptable performance and, if so, whether the deficiency was so egregious that it compromised the appellate

process to such a degree that it undermined confidence in the correctness of the result. Groover v. Singletary, 656 So. 2d 424, 425 (Fla. 1995); Byrd v. Singletary, 655 So. 2d 67, 68-69 (Fla. 1995). A review of the record demonstrates that neither deficiency nor prejudice has been shown in this case.

Taylor asserts that Ms. Norgard raised two issues upon which relief could not be granted and failed to raise other issues which were meritorious. While Taylor identifies potential issues available which were not briefed, he has not offered any substantive argument to demonstrate that any of the omitted issues would have been successful on appeal. To the contrary, none of the omitted issues he identifies would have been found meritorious. Therefore, counsel was not ineffective for failing to present these claims. Groover, 656 So. 2d at 425; Chandler v. Dugger, 634 So. 2d 1066, 1068 (Fla. 1994) (failure to raise meritless issues is not ineffective assistance of appellate counsel).

The United States Supreme Court recognized that "since time beyond memory" experienced advocates "have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-52 (1983). The failure of appellate counsel to brief an issue which is without

merit is not a deficient performance which falls measurably outside the range of professionally acceptable performance. See Card v. State, 497 So. 2d 1169, 1177 (Fla. 1986). Habeas relief is not warranted on Taylor's meritless claims.

CLAIM I

WHETHER APPELLATE COUNSEL WAS INEFFECTIVE FOR CHALLENGING STANDARD JURY INSTRUCTIONS WHICH WERE NOT GIVEN IN THIS CASE.

Taylor's first argument asserts that his appellate counsel rendered constitutionally deficient performance by presenting two "boilerplate" issues challenging the standard penalty phase jury instructions, despite the fact that the trial judge modified the instructions given to Taylor's jury at the request of the defense. Taylor has not demonstrated that it is unconstitutionally unreasonable to present issues which do not apply factually, and he has failed to identify any possible prejudice from the presentation of the jury instruction claims. Accordingly, habeas relief should be denied.

It should be noted that the trial judge in this case, the Honorable Barbara Fleischer, was particularly careful to ensure that Taylor's rights were fully protected and that he received a fair trial. The initial trial resulted in a mistrial and Judge Fleischer noted her intention to provide Taylor with "extreme

due process" over the course of the retrial (DA. V11/405). Such judicial vigilance, which was specifically commended in Justice Pariente's concurring opinion, makes the task of identifying and establishing trial error all the more difficult for the appellate litigator. See Taylor, 937 So. 2d at 604.

The presentation of Taylor's jury instructions claims, which together comprise only five pages of his appellate brief, does not suggest that appellate counsel provided prejudicially deficient performance. Contrary to Taylor's supposition, the fact that these issues were raised does not indicate that counsel failed to read the appellate record. Over sixty pages of the brief were devoted to the Statement of the Case and Statement of the Facts, reflecting a studied familiarity with the full record on appeal.

Notably, Taylor's petition also asserts that Ms. Norgard should have pursued a claim regarding the trial court's denial of his motion to suppress evidence seized from his motel room (Petition, p. 12-13), an issue which was actually raised, argued and addressed by this Court in the appeal. Taylor, 937 So. 2d at 597-99. The argument that counsel failed to present a claim as a basis for finding ineffective assistance of counsel where the claim was actually presented has no more application in this case than the "boilerplate" jury instruction issues which Taylor

now faults counsel for presenting; its inclusion despite the obvious lack of merit is persuasive anecdotal evidence that this is something reasonable attorneys do all the time, and refutes Taylor's claim of deficient performance.

Taylor makes no attempt to identify any potential prejudice from the inclusion of these issues on appeal. Instead, he asserts that prejudice should be presumed under Cronic v. United States, 466 U.S. 648 (1984), because he cannot meet the traditional Strickland standard necessary for relief (Petition, p. 8, noting if Strickland was to be applied here, "relief would never be granted"). Under Cronic, prejudice can be presumed where counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing," resulting in the "constructive denial of the assistance of counsel altogether." Cronic, 466 U.S. at 659, 692.

Taylor is most assuredly not entitled to a presumption of prejudice under Cronic. Counsel in this case filed a 99-page brief, extensively related the factual and legal background of the case, and presented substantive claims regarding the admission of evidence, the proportionality of the sentence, and the constitutionality of the death penalty. The argument that Taylor's appeal was no more meaningful than if he had been completely unrepresented is offensive and affirmatively refuted

by the record. As no deficient performance or prejudice has been established, this claim must be rejected and habeas relief denied.

CLAIM II

WHETHER APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT MERITORIOUS CLAIMS.

Taylor next contends that Ms. Norgard failed to raise issues which should have been presented, claiming that there were issues which would have warranted reversal of his convictions and sentences. Once again Taylor has failed to demonstrate either deficient performance or prejudice, and his claim of ineffective assistance of appellate counsel must be rejected.

Taylor's assertion that Ms. Norgard should have presented additional claims is facially insufficient and offers no basis for a finding that Ms. Norgard's representation fell below the measure of reasonable counsel. Taylor does not attempt to convince this Court of the validity of any particular unpresented claim, he merely identifies possible issues based on the defense arguments below seeking a judgment of acquittal, a new trial, and a new penalty phase. In that context, the petition discusses: (1) the denial of the motion for judgment of acquittal based on (a) the failure to prove premeditation,

citing Norton v. State, 709 So. 2d 87 (Fla. 1997), Mungin v. State, 689 So. 2d 1026 (Fla. 1995), and Carpenter v. State, 758 So. 2d 1182 (Fla. 2001); (b) the failure to charge, prosecute and prove felony-murder; (c) the counts involving William Maddox being defective due to a fatal variance between the indictment and the proof at trial; and (d) the failure to prove the robbery charges; (2) the denial of the motion for new trial based on (a) the denial of the motion to suppress evidence from the motel room; (b) the denial of a defense motion in limine regarding Taylor's use of the victim's checks and credit cards; (c) the admission into evidence of the pawn receipt for the shotgun; (d) the refusal to allow the defense to refresh Maddox's recollection as to his legal name; and (e) the denial of the defense request for an interrogatory guilt phase verdict; and (3) denial of the motion for a new penalty phase based on (a) the refusal to instruct the jury that each aggravating circumstance must be found unanimously and beyond a reasonable doubt; (b) the denial of the constitutional challenge to Florida Rule of Criminal Procedure 3.202; (c) the denial of defense challenge of victim impact evidence; and (d) the denial of defense challenge to the constitutionality of the death penalty (Petition, pp. 9-14).

Curiously, two of the "omitted" claims which Taylor identifies were actually raised, argued, and addressed by the court in his direct appeal (the motion to suppress and the constitutionality of the death penalty). In addition, as this Court has repeatedly acknowledged, an independent review of the sufficiency of the evidence to support a first-degree murder conviction is always conducted when considering a capital case on direct appeal, even when the issue is not raised by counsel. Murray v. State, 3 So. 3d 1108, 1125 (Fla. 2009); Snelgrove v. State, 921 So. 2d 560, 570 (Fla. 2005); Mansfield v. State, 758 So. 2d 636, 649 (Fla. 2000); Jennings v. State, 718 So. 2d 144, 154 (Fla. 1998). Thus, a number of the "unpresented" claims identified were considered and rejected on appeal.

As to each identified claim, Taylor does no more than recite the defense position below, noting the cases and comments asserted to the trial court in the arguments on motions for judgment of acquittal and for a new trial. He offers thirteen possible issues over five pages in the petition, with no substantive review of the relevant facts and legal principles to apply. Had appellate counsel presented these same claims in this same manner, this Court would have ruled the claims abandoned for lack of substantive briefing. See Simmons v. State, 934 So. 2d 1100, 1111, n.12 (Fla. 2006); Coolen v. State,

696 So. 2d 738, 742, n.2 (Fla. 1997); Duest v. Dugger, 555 So. 2d 849, 852 (Fla. 1990) ("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived.").

Once again Taylor makes no attempt to show prejudice under Strickland, apparently again relying on the Cronic standard to relieve him of that burden. He does not even identify a single claim upon which relief would reasonably have been granted, and only asserts that reversal of his conviction would have been warranted within the heading of his second issue. His failure to even allege that there was an issue which counsel failed to present which would probably result in the granting of a new trial or new penalty phase or some substantive relief renders his petition legally insufficient. Habeas relief must be denied as to this issue as well.

CONCLUSION

Respondent respectfully requests that this Honorable Court DENY the instant petition for writ of habeas corpus.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS has been furnished by U.S. mail to Mark S. Gruber and Maria Perinetti, Assistant Capital Collateral Regional Counsel, Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida, 33619, this 28th day of January, 2011.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.100(*l*).

Respectfully submitted,

PAMELA JO BONDI
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