IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-693

MICHAEL GORDON REYNOLDS,

Petitioner,

v.

EDWIN G. BUSS, Secretary,
Florida Department of Corrections

Respondent.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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STATEMENT OF THE CASE AND FACTS

The Respondent relies on the following facts and procedural history summarized by this Court on direct appeal:

> On August 25, 1998, the grand jury indicted the appellant, Michael Gordon Reynolds, on three counts of first-degree premeditated murder for the murders of Danny Ray Privett, Robin Razor, and Christina Razor, and for the burglary of a dwelling during which a battery upon Robin or Christina or both was committed while armed with a weapon. On July 22, 1998, the bodies of the victims were found on the property located at 1628 Clekk Circle in Geneva, Florida. Danny's body was found outside near a large pine tree, and the bodies of Robin and Christina were found inside a trailer in which the victims were living. The trial in this case began on April 21, 2003, and on May 7, 2003, Reynolds was found guilty of the lesser-included offense of second-degree murder as to the murder of Danny, and guilty as charged as to the remaining three counts of the four-count indictment.
>
> The evidence established that on July 22, 1998, Shirley Razor, the mother of victim Robin Razor, traveled to the crime scene to deliver items Danny used in the work he was doing on trailers at that location. Upon arriving at the property, Shirley noticed Danny lying on the ground outside. Shirley, being accustomed to seeing Danny drunk and passed out, proceeded to her separate trailer on the property and ate her lunch. After finishing her lunch, Shirley walked over to the trailer in which Danny and Robin were living when she noticed that Danny had a "hole in his head." After discovering that Danny was dead, Shirley ran to a neighbor's residence and called the authorities. Subsequent to the arrival of the fire department personnel, Shirley went to her daughter's trailer and upon looking inside found that her daughter, Robin, and her granddaughter, Christina, were inside and apparently dead.
>
> At trial, a medical examiner, Dr. Sara Hyatt Irrgang, testified that the deaths had occurred at least eight hours, but probably more than twelve hours prior to her arrival at the crime scene, placing the time of death between nine p.m. on July 21 and seven a.m. on the morning of

July 22. The evidence demonstrated that Danny Ray Privett was found lying outside beneath a large pine tree on his side with his face down, surrounded by bloody pieces of concrete block and broken pieces of glass. Danny's jeans were partially unzipped suggesting that he had been in the process of urinating when the attack occurred. The autopsy of Danny Ray Privett revealed that he suffered a large depressed skull fracture with additional injuries to the head area. The wounds appeared to have been caused by three or more separate blows, with the injuries indicating that the assailant had been behind the victim. There was no indication of any defensive wounds on Danny, and examination of his major skull injury revealed that the injury was likely caused by a partially broken cinder block, based on fragments found within the wound. The medical examiner was unable to determine the order in which the injuries had been inflicted upon him. The cause of death for Danny was determined to be primarily due to blunt force trauma to the head with the large depressed skull fracture probably being the fatal blow. If this blow had been inflicted first, the medical examiner opined that the victim would have lost consciousness within a second to a minute or two.

Robin and Christina Razor were found dead inside the living room portion of the camper trailer being used as living quarters. Robin was found lying on the floor, face up. Christina was found nearby sitting on the couch and leaning to her left. The living room area was in disarray and a large amount of blood was scattered throughout this area of the trailer. Robin Razor's autopsy revealed that she suffered multiple stab wounds along with multiple blows to the side of her face and a broken neck resulting in injuries to her spinal cord. Closer examination revealed that Robin suffered ten stab wounds to the head and neck area and one to the torso area. The wounds appeared to have been inflicted with a sharp object such as a knife or scissors. Based on examination of the Robin's body and the defensive wounds present, the medical examiner opined that she had been involved in a violent struggle. In addition to the above wounds, Robin suffered multiple superficial wounds to her torso area which the medical examiner stated to be consistent with torment wounds--wounds produced not to cause serious injury but to cause aggravation and produce fear in the victim. The medical examiner was of the opinion that because blows to the victim's head were inflicted at different angles and the presence of significant defensive wounds, it was likely that she was conscious

and struggling when these wounds were inflicted. The primary cause of death for Robin was determined to be the broken neck and spinal cord injury, although bleeding from the stab wounds would have also resulted in death.

The autopsy of Christina Razor revealed that she suffered blunt force trauma to her head, a stab wound to the base of her neck that pierced her heart, and another stab wound to her right shoulder that pierced her lung and lacerated her pulmonary artery. These latter two wounds would have resulted in significant internal and external hemorrhaging and would have been fatal. The medical examiner indicated that the only sign of defense wounds to Christina was the presence of a small contusion to her left hand, which could have occurred as she attempted to block a blow from her assailant. The medical examiner opined that Christina would have lost consciousness within a minute or two of receiving the stab wounds. The primary cause of death for Christina was determined to be internal and external hemorrhaging.

During his investigation of the crimes, Investigator John Parker of the Seminole County Sheriff's Department made contact with Reynolds and requested that he submit to an interview, to which Reynolds voluntarily agreed. During this interview, Investigator Parker also inquired about injuries that he observed on Reynolds' hand and ankle. In response to inquiries made about these injuries, Reynolds advised the investigator that at approximately five a.m. on the morning that the victims' bodies were discovered, he was taking his dog outside and slipped on the exterior step of his camper, twisting his ankle. Reynolds stated that the cut on his hand occurred when he caught his hand on a burr on the aluminum door frame of his trailer as he attempted to break his fall by grabbing the door frame. Reynolds advised the investigator that approximately thirty or forty minutes after sustaining the injuries he cleaned the cut to his hand and proceeded to an emergency room for treatment. Reynolds stated that while on his way to the emergency room he suffered a flat tire and borrowed a jack from a convenience store to change his tire and after doing so he proceeded to the emergency room. After receiving treatment for his injuries, Reynolds informed the investigator that he returned to his residence and removed the burr from the trailer door frame with a pair of channel-lock pliers.

In addition to the discussion concerning the injury, Reynolds also discussed an altercation in which he was involved with Danny Ray Privett regarding a trailer that was allegedly given to Reynolds by his landlord. According to Reynolds, the argument with Danny was centered upon Danny removing the trailer from Reynolds' property without permission. Upon discovering that Danny had removed the trailer, Reynolds indicated that he confronted Danny and a heated argument ensued. Reynolds stated that after exchanging words with Danny, he left Danny's property but returned a short while later to apologize and advise Danny that he could keep the trailer. Significantly, during this interview Reynolds advised the investigator that he had never been inside the trailer in which the victims were living. Subsequent to this interview, Reynolds gave permission for the search of both his trailer and his vehicle, and he also agreed to provide hair and blood samples for DNA analysis. Additionally, pursuant to a search warrant certain evidence was seized from Reynolds' vehicle and residence.

At trial, a neighbor of the victims testified that on the night prior to the discovery of the bodies he observed a car similar to that of Reynolds parked at the victims' residence. Fingerprint and shoe pattern analysis of the crime scene and items collected from the scene revealed several prints of value, but none of them connected Reynolds to the scene. However, extensive evidence with regard to DNA analysis resulting from testing of items of evidence recovered from the crime scene was presented. Several of the items recovered from the crime scene inside the trailer and on the exterior of the trailer contained a DNA profile matching that of Reynolds. There was no eyewitness testimony offered by the State and, other than the concrete block allegedly used to strike the victims, no other weapon was recovered.

. . . .

After hearing all the evidence, the jury rendered a verdict finding Reynolds guilty of second-degree murder as to the death of Danny Privett, two counts of first-degree murder as to the deaths of Robin and Christina Razor, and burglary of a dwelling during which a battery was committed while Reynolds was armed with a weapon.

During the penalty phase the State presented four witnesses. Danna Birks established multiple prior convictions of Reynolds. Tonya Chapple, the victim of Reynolds' prior conviction for aggravated battery, described the circumstances surrounding the prior crime. Christina Razor's grandmother testified as to Christina's age at the time of the crimes, and Robin Razor's brother read a prepared statement in the nature of victim impact evidence. Reynolds, after thorough consultation with his attorneys and the trial court, waived his right to present mitigating evidence.

On May 9, 2003, the jury returned unanimous recommendations of death for both first-degree murder convictions.

. . . .

On September 19, 2003, the trial judge sentenced Reynolds to concurrent sentences of life for the murder of Danny Ray Privett and the burglary conviction, and the trial judge entered separate sentences of death for the murders of Robin and Christina Razor. In pronouncing Reynolds' sentence, the trial court found that the State had proven beyond a reasonable doubt the existence of four statutory aggravators for the murder of Robin Razor: (1) Reynolds had previously been convicted of a another capital felony or a felony involving a threat of violence to the person (great weight); (2) Reynolds committed the murder while he was engaged in or was an accomplice in the commission of or an attempt to commit a burglary of a dwelling (great weight); (3) the murder was committed for the purpose of avoiding a lawful arrest (great weight); and (4) the murder was committed in an especially heinous, atrocious, or cruel fashion (great weight).

n1 *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

As to Christina Razor's murder, the trial court found that the State had proven beyond a reasonable doubt the existence of five statutory aggravators: (1) Reynolds had previously been convicted of a another capital felony or a felony involving a threat of violence to the person (great weight); (2) Reynolds committed the murder while he was engaged in or was an accomplice in the commission of or an attempt to commit a burglary of a dwelling (great weight); (3) the murder was

committed for the purpose of avoiding a lawful arrest (great weight); (4) the murder was committed in an especially heinous, atrocious, or cruel fashion (great weight); and (5) the victim of the murder was a person less than twelve years of age (great weight).

In its analysis of the mitigation present, the trial court acknowledged the defendant's waiver of the presentation of mitigating evidence but, nonetheless, the court considered and weighed any mitigation that it found to be established. In doing so, the trial court found that the following nonstatutory mitigating circumstances had been established and were applicable to both the murders of Robin and Christina Razor: (1) that Reynolds was gainfully employed at the time of the crimes (little weight); (2) that Reynolds manifested appropriate courtroom behavior throughout the proceedings (little weight); (3) that Reynolds cooperated with law enforcement (little weight); and (4) that Reynolds had a difficult childhood (little weight). The trial court determined that the evidence did not establish that Reynolds could easily adjust to prison life. The trial court recognized that evidence was presented by Reynolds for purposes of establishing lingering doubt. However, the trial court noted that it would not consider any theory of lingering doubt as nonstatutory mitigation in its sentencing analysis.

Reynolds v. State, 934 So. 2d 1128, 1139 (Fla. 2006).

Reynolds raised eight issues on direct appeal:

(1) The trial court erred in refusing to admit the entire statement of Justin Pratt;

(2) Insufficient evidence on all counts;

(3) The trial court abused its discretion in refusing to allow the defendant to waive the jury recommendation for life or death;

(4) The trial court erred in allowing testimony regarding a prior violent felony;

(5) The Florida death penalty statutes place the burden on the defendant to prove that life imprisonment should be imposed;

(6) The trial court erred in refusing to consider residual doubt;

(7) The trial court improperly found aggravating circumstances and failed to find and properly weigh mitigating circumstances; and

(8) The Florida death penalty statue is unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002).

This Court affirmed Reynolds' convictions and sentences of death for Robin Razor and Christina Razor, along with the conviction and sentence for the second-degree murder of Danny Privett and burglary of a dwelling. *Reynolds v. State*, 934 So. 2d 1128 (Fla. 2006).

Reynolds filed a petition for writ of certiorari in the United States Supreme Court. Relief was denied on January 8, 2007. *Reynolds v. Florida*, 549 U.S. 1122 (2007).

On December 28, 2007, Reynolds filed a Rule 3.851 Motion for Postconviction Relief and raised sixteen claims:

Claim1(a): Prosecutorial misconduct/*Giglio* - testimony of Charles Badger;

Claim 1(b): Prosecutorial misconduct - argument on sexual battery not charged;

Claim 2: *Brady* evidence - FDLE analyst Fitzpatrick/Agent Parker;

Claim 3(a): ineffective assistance of counsel - failure to object to false testimony;

Claim 3(b): ineffective assistance of counsel - failure to object in guilt phase to closing argument about a sexual battery not charged;

Claim 4: ineffective assistance of counsel - failure to object to closing argument in penalty phase about a sexual battery not charged;

Claim 5: ineffective assistance of counsel - failure to object to misstatement regarding burden of proof;

Claim 6: ineffective assistance of counsel - failure to question jurors during *voir dire*;

Claim 7: ineffective assistance of counsel – inform jury of prior criminal convictions;

Claim 8: ineffective assistance of counsel – request *voir dire* of jurors regarding "shrine" to victims;

Claim 9: ineffective assistance of counsel – autopsy photos;

Claim 10: ineffective assistance of counsel - Inv. Parker not qualified to give expert testimony;

Claim 11: ineffective assistance of counsel – object to testimony regarding Hillsborough warrant;

Claim 12: ineffective assistance of counsel – neighbor not qualified to give lay testimony about bleaching clothing;

Claim 13: ineffective assistance of counsel – failure to preserve Pratt testimony as "not hearsay," failure to preserve Pratt's location the night of the murder, failure to present Pratt statement regarding evidence only the killer would know about, failure to prepare for Nicole Edwards' testimony;

Claim 14: constitutionality of §27.702, Fla. Stat.;

Claim 15: constitutionality of rules regarding postconviction interview of jurors; and

Claim 16: Cumulative error.

An amended motion filed August 10, 2009, raised five (5) additional claims:

> Claim A-I: Trial counsel was ineffective for failing to investigate mitigation;
>
> Claim A-II: Trial counsel was ineffective for failing to investigate other suspects and present expert testimony on the legally insufficient evidence;
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> Claim A-III: Lethal injection is unconstitutional;
>
> Claim A-IV: Trial counsel was ineffective for failing to dismiss a sleeping juror; and
>
> Claim A-V: Trial counsel was ineffective for failing to prepare the defendant to testify and for informing the jury the defendant would testify.

An evidentiary hearing was held September 14-16, 2009, and, on July 6, 2010, the trial court denied relief. The appeal from that denial is pending before this Court. Case No. SC10-1602.

ARGUMENT

GROUND I

APPELLATE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO RAISE THE TRIAL JUDGE'S MISSTATEMENT DURING *VOIR DIRE*

On pages 22-25 of his petition, Reynolds claims appellate counsel was ineffective in failing to argue it was fundamental for the trial court to state in *voir dire*, "the State doesn't have to do anything, you can't hold it against them." Petition at 22.

The record on direct appeal shows that during *voir dire* the trial judge said:

> The transcript of the record reads as follows: The Defense will have an opportunity to put on a case, if it chooses to do so. Again, the State (sic)[1] doesn't have to do anything, you can't hold it against them. If the Defense puts on a case, they will call witnesses, they will examine them, the State will cross-examine them. They may present evidence if they choose to do so."

(DAR, V9, R571, lines 12-19). The prosecutor advised the judge of the mistake brought the error to the attention of the trial judge, who responded "I think I drove it home enough to where they understand." (DAR, V10, R627). Defense counsel then asked the judge to correct the error, but it was not corrected. (DAR, V10, R627-28).

The one misstatement by the trial court was an isolated comment that occurred during *voir dire*. The jury was not, as Reynolds alleges, "instructed" that

[1] "(Sic)" is in the original transcript.

the defense has any burden. To the contrary, during closing argument, both the State and the defense constantly reminded the jury of the burden of proof, reasonable doubt, and the presumption of innocence. (DAR, V21, R2782, 2783, 2794, 2823, 2825, 2828, 2829, 2830, 2950, 2952) (State on reasonable doubt); (DAR,V21, R2934) (State on burden); DAR, V21, 2870, 2880, 2885, 2891-92, 2913, 2925, 2949) (defense on reasonable doubt); (DAR, V21, 2891-92, 2894, 2897, 2900) (defense on burden of proof). The judge instructed the jury on each count about the burden of proof and reasonable doubt. (DAR, V21, R2973, 2975, 2976, 2977, 2979, 2980, 2981, 2982, 2984, 2985, 2986, 2987, 2989, 2990, 2994, 2995, 2996).

Reynolds fails to demonstrate that this one isolated misstatement undermined confidence in the outcome of his trial. *Gonzalez v. State,* 990 So. 2d 1017, 1027 (Fla. 2008). *See, e.g. Hojan v. State*, 3 So. 3d 1204, 1212 n.4 (Fla. 2009) (“misstatement by the trial court does not undermine the remaining evidence supporting the trial court's rejection of the motion to suppress”); *Henyard v. State,* 689 So. 2d 239 (Fla. 1996) (finding that the prosecutor's misstatement of the law during *voir dire* was harmless error because it only happened three times and the misstatement was not repeated by the trial court when instructing the jury prior to deliberations); *Allen v. State*, 939 So. 2d 273, 276 (Fla. 4th DCA 2006) (“the determination of whether fundamental error occurred requires that the trial judge's

slip of the tongue be examined in the context of the other jury instructions, the attorneys' arguments, and the evidence in the case to decide whether the 'verdict of guilty could not have been obtained without the assistance of the alleged error.' ") (*quoting State v. Delva*, 575 So. 2d 643, 645 (Fla. 1991)).

Appellate counsel cannot be ineffective in failing to raise a meritless issue. *Johnston v. State/Buss*, 36 Fla. L. Weekly S122, 127 (Fla. Mar. 24, 2011); *Taylor v. State/McNeil*, 36 Fla. L. Weekly S72, 77 (Fla. Feb. 10, 2011); *Kilgore v. State/McNeil*, 55 So. 3d 487, 512 (Fla. 2010); *Dessaure v. State/McNeil*, 55 So. 3d 478, 485 (Fla. 2010). To succeed on the ineffective assistance of appellate counsel claim, a defendant must establish that counsel's failure to raise a claim on appeal is "first, whether the alleged omissions are of such magnitude as to constitute a serious error or substantial deficiency falling measurably outside the range of professionally acceptable performance and, second, whether the deficiency in performance compromised the appellate process to such a degree as to undermine confidence in the correctness of the result." *Johnston v. State/Buss*, 36 Fla. L. Weekly S122, 127 (Fla. Mar. 24, 2011) (*quoting Pope v. Wainwright*, 496 So. 2d 798, 800 (Fla.1986)); *see also Freeman v. State*, 761 So. 2d 1055, 1069 (Fla. 2000); *Thompson v. State*, 759 So. 2d 650, 660 (Fla. 2000). Reynolds has failed to demonstrate that appellate counsel was constitutionally ineffective.

Last, this claim raises essentially the same issue that was raised in Reynolds'

postconviction motion in Claim 5 and on appeal to this Court in Point 1, Case No. SC10-1602. This Court has held that "Habeas corpus is not to be used for additional appeals of issues that could have been, should have been, or were raised in a postconviction motion." *Johnston v. State/Buss*, 36 Fla. L. Weekly S122, 127 (Fla. Mar. 24, 2011); *Schoenwetter v. State/McNeil*, 46 So.3d 535, 562 (Fla. 2010); *Green v. State/McDonough*, 975 So. 2d 1090, 1115 (Fla. 2008); *Mills v. Dugger*, 559 So. 2d 578, 579 (Fla. 1990) (*citing Suarez v. Dugger*, 527 So. 2d 190 (Fla. 1988).

GROUND II

APPELLATE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO RAISE THE NON-MERITORIOUS "AUTOMATIC AGGRAVATOR" ISSUE

On pages 25-31 of his petition, Reynolds argues that appellate counsel was ineffective for failing to raise the "automatic aggravator" issue: that the conviction for a felony which is a basis for felony murder should not be used as an aggravating circumstance. Reynolds acknowledges that Reynolds was convicted of premeditated murder as well as felony murder. (Brief at 26). Reynolds also acknowledges this Court rejected his argument in *Blanco v. State*, 706 So. 2d 7, 11 (Fla. 1997) (finding that instruction on aggravating circumstance of murder in the course of a felony does not constitute an automatic aggravator.) (Brief at 28-29).

This Court has repeatedly rejected claims that the "committed in the course of a felony" aggravating circumstance constitutes an unconstitutional automatic aggravator. *See Heath v. State*, 3 So.3d 1017, 1033 (Fla. 2009); *Owen v. State*, 862 So.2d 687, 704 (Fla.2003); *Johnson v. Moore*, 837 So.2d 343, 348 (Fla.2002). Because this claim has no merit, appellate counsel cannot be ineffective for not raising the issue on appeal. *Mann v. Moore*, 794 So. 2d 595, 599 (Fla. 2001); *Rutherford v. Moore*, 774 So. 2d 637, 643 (Fla. 2000).

GROUND III

THE COURT REPORTER DID NOT "ALTER" THE TESTIMONY OF DNA ANALYST CHARLES BADGER; THIS ISSUE HAS NO MERIT

Reynolds claims the court reporter "altered the transcribed testimony of DNA Analyst Charles Badger, so that DNA on swabs from the 11-year-old victim's vagina appeared to be Reynolds." (Petition at 31). This claim is a variation of an issue raised in the postconviction appeal, Case No. SC10-1602, currently pending with this Court. On pages 37-41 of the Initial Brief in the postconviction appeal, Reynolds claims FDLE analyst Badger presented false testimony. As outlined in the State's answer brief in Case No. SC10-1602, the court reporter transcribed a sentence with the punctuation in the wrong place.

A habeas petition may not be used to litigate issues that have already been raised in a postconviction motion. *Johnston v. State/Buss*, 36 Fla. L. Weekly S193, 197 (Fla. Apr. 28, 2011); *See McDonald v. State/McDonough*, 952 So. 2d 484, 498 (Fla. 2006); *Knight v. State/Crosby*, 923 So. 2d 387, 395 (Fla. 2005) (*citing Baker v. State*, 878 So. 2d 1236, 1241 (Fla. 2004); *Parker v. Dugger*, 550 So. 2d 459, 460 (Fla. 1989)).

Further, this issue has no merit. The trial transcript indicates that FDLE analyst Charles Badger testified regarding the Christina Razor vaginal swab:

> And those results that were obtained were found to be consistent or matched the DNA results that were obtained were found to be consistent or matched the DNA profile of **Christina Razor and**

> **Michael Reynolds. Robin Razor and Danny Privett were excluded** from being the donors of the DNA profile observed.

(DAR, V17, R2015).

This was a scrivener's error on the part of the court reporter, and there was a "." in the wrong place. The State obtained an affidavit from the court reporter in which she corrected the error and the State attached the affidavit to its response to the postconviction motion. (V2, R252). Reynolds' claim that the court reporter intentionally altered the transcript to implicate him is nothing more than speculation.

Further, the argument that the error in the transcript led the jurors to believe Reynolds sexually assaulted Christina is pure speculation. Charles Badger's report stated that Reynolds, Robin Razor and Privett were excluded as donors. (DAR, V8, R1301, Def. Exh. 9; V2, R261). The prosecutor stated that there was no sperm on Christina's body. (DARV21, R2939). The State also presented testimony that there was no semen on Christina's vaginal swab, and the defense expanded on that testimony in direct examination. (DAR, V15, R1651, 1691). Defense counsel had Charles Badger's report, which was provided in discovery on September 18, 2000. (V2, R254-64). Badger's report states at page 6 the results of DNA testing on the vaginal swabs from Christina Razor:

> The partial DNA profile... obtained for exhibit ME-9E is consistent with the profile obtained from ME-2b (stain card of liquid blood represented as being from Christina Razor). **Michael Reynolds,**

> **Robin Razor and Danny Privett are excluded** from being the donor of the DNA profile observed.

The trial judge noted in his order after the postconviction evidentiary hearing:

> The Defendant continues to argue what he terms "the Badger lie." This issue has been litigated extensively throughout the post-conviction process, and is outlined at various points in the record. This Court declined to correct the transcript to comport with the State's interpretation of what it said, nor did the Court accept that the Defendant's interpretation was correct. The Court simply let the transcript speak for itself, leaving the parties to argue about the differing interpretations. However, this Court has heard the tape of the trial, as did Attorney Iennaco. (EH 769-79). It does appear that the State's interpretation of the testimony is correct, especially when noting, as Attorney Iennaco did, that the presence of a gender marker would necessarily make the identification of the DNA coming from both the Defendant and the female victim a genetic impossibility.
>
> (V10, R1646 n. 2).

Reading the transcript together with the FDLE report, it is apparent that when Badger testified and started a sentence with “and”, the court reporter simply transcribed it incorrectly.

This claim does not entitle Reynolds to relief.

CONCLUSION

Reynolds has failed to demonstrate that his appellate counsel was constitutionally ineffective, and he presents no other issues that are cognizable in these habeas proceedings. Based upon the foregoing, the Respondent respectfully requests that this Court deny habeas corpus relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been furnished by U.S. Mail to: Melodee A. Smith, Esquire, 101 NE 3rd Ave., Suite 1500, Ft. Lauderdale, Florida 33301 on this ___ day of June, 2011.

_____
Of Counsel

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with 14 point Times New Roman type, a font that is not spaced proportionately.

_____
BARBARA C. DAVIS