IN THE SUPREME COURT OF THE STATE OF FLORIDA,

NICHOLAS AGATHEAS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC10-602

****

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

****

RESPONDENT'S ANSWER BRIEF ON THE MERITS

BILL McCOLLUM
Attorney General
Tallahassee, Florida

CELIA A. TERENZIO
Florida Bar No. 0656879
Bureau Chief

JOSEPH A. TRINGALI
Assistant Attorney General
Florida Bar No. 0134924
1515 North Flagler Drive
West Palm Beach, FL 33401
Telephone (561) 837-5000

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited **Page Number**

FEDERAL CASES

STATE CASES

Statutes Cited

PRELIMINARY STATEMENT

Petitioner was the appellant and Respondent was the appellee in the Florida Fourth District Court of Appeal. The issue on appeal was whether Petitioner was legally convicted and sentenced. In particular, Petitioner argued that the photographs of the contents of Petitioner's backpack, including a .45 caliber revolver, a bandana, and latex gloves nestled inside another pair of gloves, were improperly admitted into evidence, and that his trial counsel was ineffective for not objecting to the introduction of the photographs. The Fourth District Court of Appeal found that the photographs were relevant to corroborate the testimony of a State witness, and, therefore, counsel was not ineffective for failing to object.

In this brief, the parties will be referred to as they appear before this Court, except that the Respondent may also be referred to as "State" or "Prosecution."

The following symbols will be used;

IB = Petitioner's Initial Brief on the Merits

R = Record on Appeal

T = Transcripts

STATEMENT OF THE CASE AND FACTS

The procedural history and facts on which the Fourth District Court of Appeal relied in making its decision are found in Agatheas v. State, 28 So.3d 204 (Fla. 4th DCA 2010), which Respondent adopts as its statement of the case and facts. A copy of the Fourth District Court of Appeal's decision is attached hereto for the convenience of this Court.

Additional facts found in the trial record are as follows:

1. Petitioner admitted to Jessica Krauth (who was his girlfriend at the time of the crime), that he took off his shirt and left it at the scene of the crime (T 570). A black tee shirt was recovered in the front yard of the victim's residence (T 464, 573, 692, 693).

2. The shirt that was recovered contained DNA that was identified as belonging to Petitioner (T 644).

3. Petitioner admitted to owning firearms: "a whole bag of 38's" (T 853-855). The same type of weapon was used to murder the victim (T 615; 627).

4. Petitioner admitted to listening to Reggae music on the radio "late at night" (T 888-889). When detectives started up the victim's van, the radio was on, and it was tuned to the same type of radio station (T 947).

5. Petitioner admitted to Jessica Krauth that after murdering the victim, he stole

the victim's vehicle and was driving it around while listening to music really loud (T 571-572).

6. The victim's vehicle was found abandoned in Boca Raton, within one and a half miles of three pay telephones that were used to call Jessica Krauth's number the night of the murder (T 790, 793-796).

SUMMARY OF THE ARGUMENT

I

Petitioner argues the trial court committed fundamental error in admitting into evidence the contents of Appellant's backpack which was seized after he was arrested. He contends the Fourth District Court of Appeal erred in affirming the trial court's decision to admit the evidence.

Fundamental error has been defined as error that reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error. Respondent submits, first, that the admission of the complained-of evidence was not erroneous. To be admitted into evidence, a weapon need not be the exact same weapon that was used in the crime; it need only have probative value to issues material to the case. Here, the contents of the backpack supported the testimony of a key State witness. Thus, the contents of the backpack were relevant to her credibility. Secondly, even if it could be argued that the contents of the backpack were completely irrelevant, any error would be harmless beyond a reasonable doubt.

II

In order to show ineffective assistance of counsel, and defendant must meet

two requirements: (1) the claimant must identify a particular act or omission of the lawyer that is outside the broad range of reasonably competent performance under prevailing professional standards, and (2) the clear, substantial deficiency shown must further be shown to have affected the fairness and reliability of the proceeding so that confidence in the outcome is undermined. Counsel is not required to be infallible. The standard for judging counsel's performance is reasonableness under prevailing professional norms. The test for reasonableness is not whether counsel could have done something more or different; instead, the court must consider whether the performance fell within the broad range of reasonable assistance at trial. The issue is not what is possible or what is prudent or appropriate, but only what is constitutionally compelled.

Petitioner's counsel could not object to the admission of the complained-of evidence because the evidence was admissible. Petitioner's counsel tested the State's evidence and thoroughly cross-examined the State's witnesses. He argued strongly on behalf of his client and provided all that counsel is required to provide under the Sixth Amendment. The fact that Petitioner was found guilty should be attributed to the evidence, not to his attorney.

III

The final issue raised by Petitioner was not a part of the District Court's opinion and therefore should not be considered by this Court. Conflicts of interest exists when individuals such as co-defendants have interests in the same matter that are adverse to each other, or where either of them has an interest in the proceeding of the other. In terms of legal representation, a conflict of interest arises when one defendant stands to gain significantly by counsel adducing probative evidence or advancing plausible arguments that are damaging to the cause of a codefendant whom counsel is also representing. The fact that Petitioner's attorney was facing unrelated federal charges is not a "conflict of interest."

Further, Petitioner was offered replacement counsel in a 20-page colloquy with (among others) the trial judge, his father, his attorney, and his attorney's attorney. Through it all, Petitioner was steadfast in wanting John Garcia to represent him. Given Petitioner's refusal, it would have been a violation of his right to counsel if the trial court had forced him to accept replacement counsel.

ARGUMENT

POINT I

FUNDAMENTAL ERROR DID NOT OCCUR WHEN THE TRIAL COURT ALLOWED THE STATE TO INTRODUCE EVIDENCE SEIZED FROM THE PETITIONER (Restated).

In his first point on appeal, Petitioner contends the Fourth District Court of Appeal erred when it found the trial court properly admitted into evidence the contents of Petitioner's backpack including a .45 caliber revolver, a bandana, and latex gloves nestled inside another pair of gloves. The items were found in Petitioner's backpack pursuant to a search warrant after Petitioner was arrested (T 898).

Respondent strongly disagrees, and submits the evidence was properly admitted in that it corroborated the testimony of Jessica Krauth, Petitioner's former girlfriend, who was a key State witness at his trial.

Standard of Review

The standard of review of a trial court's ruling on the admission of evidence is abuse of discretion; however, that discretion is abused if the ruling is contrary to the rules of evidence. See Hudson v. State, 992 So.2d 96 (Fla. 2008). An appellate court will not disturb a trial court's determination that evidence is

relevant and admissible absent an abuse of discretion. See Victorino v. State, 23 So.3d 87, 98 (Fla. 2009). Relevant evidence is generally admissible unless precluded by a specific rule of exclusion. Id. (citing § 90.402, Fla. Stat. (2004)).

Argument

In the Fourth District Court of Appeal, Petitioner argued the trial court committed fundamental error in admitting into evidence photographs of the contents of Appellant's backpack which was seized after he was arrested.

Fundamental error has been defined by this Court as error that "reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." See Anderson v. State, 841 So.2d 403 (Fla. 2003)(citations omitted). The concept of fundamental error is rooted in notions of due process, see Sochor v. State, 619 So.2d 285 (Fla. 1993), and the Court has cautioned appellate courts to exercise "'very guardedly' their discretion concerning fundamental error, and to apply the doctrine only in rare cases." See Sanford v. Rubin, 237 So.2d 134, 137 (Fla. 1970) see also, Farina v. State, 937 So.2d 612, 629 (Fla. 2006); Smith v. State, 521 So.2d 106 (Fla. 1988).

The Fourth District properly found the complained-of evidence not to be erroneous, finding that it was "relevant to corroborate the former girlfriend's [i.e., Jessica Krauth's] testimony." In so doing the District Court cited this Court's

opinion in Czubak v. State, 570 So.2d 925 (Fla. 1990), where this Court restated the well-known principle that evidence of collateral crimes, wrongs, or acts committed by the defendant is admissible if it is relevant to a material fact in issue. The Fourth District explained:

> On several occasions throughout the trial, the defendant's attorney attacked the former girlfriend's credibility, arguing, among other things, that she fabricated the story after a private investigator leaked information to her. The .45 caliber revolver and bandana recovered from the defendant's backpack corroborated her testimony regarding her observations around the time the crime was committed.
>
> Agatheas v. State, 28 So.3d at 207.

Respondent submits it is well settled that a weapon uncovered in a search of a premises controlled by a defendant can be admissible when "some part of the evidence at trial lined the seized item to the crime charged." See O'Connor v. State, 835 So.2d 1227 (Fla. 4th DCA 2003). There is no requirement that the weapon found must be the exact same weapon used in the crime charged. In Dias v. State, 812 So.2d 487, 493, (Fla. 4th DCA 2002), the Fourth District Court of Appeal held that a knife found in the defendant's van three weeks after a stabbing was admissible because it was similar to the victim's description of the knife used in the incident. Likewise, in Council v. State, 691 So.2d 1192, 1194-96 (Fla. 4th

DCA 19967), the same court upheld the admission into evidence of a gun found under the defendant's mattress during a search three weeks after a robbery because of "many similarities" that were "sufficient to establish the gun's probative value on the issues material to the case."

There is no question that Jessica Krauth was an important State witness in the case against Petitioner. Her credibility was repeatedly challenged by defense counsel (T 586-589; 594; 996; 999). The contents of Petitioner's backpack -- the backpack seized after Petitioner was arrested -- confirmed Ms. Krauth's description of what she saw around the time the crime was committed. Thus, as properly held by the Fourth District Court of Appeal, the contents of the backpack support her testimony (T 562-565) and are relevant to her credibility.

Finally, even if it could be argued that the contents of the backpack were completely irrelevant, any error would be harmless beyond a reasonable doubt pursuant to the holding of State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). As the prosecutor pointed out in his closing argument, all of the details admitted by Petitioner either to Ms. Krauth or the police or both, were confirmed by the evidence at trial (T 1009-1011). Petitioner was known to have guns similar to the murder weapon; he admitted that he took the victim's vehicle; the same vehicle was found in easy walking distance of three pay telephones that were used to call Ms.

Krauth's number; the radio was tuned to a station of the kind that Petitioner listened to; Petitioner's shirt -- confirmed by DNA -- was found at the crime scene. Clearly, all of the pieces fit, and led to only one conclusion: that Petitioner murdered the victim.

In the case at bar, there was no error in the admission of evidence; and, if any possible error crept into the trial, it is clear that error was harmless in light of all of the evidence in the case. The verdict was properly affirmed by the Fourth District Court of Appeal, and that court's decision should be affirmed by this Court.

POINT II

THE DEFENSE ATTORNEY DID NOT PROVIDE INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO OBJECT TO THE ADMISSION OF THE REVOLVER AND CONTENTS OF THE BACKPACK SEIZED FIVE YEARS AFTER THE CRIME.

In his second point on appeal, Petitioner contends he is entitled to a new trial because he was denied effective assistance of counsel, and counsel's ineffectiveness is such that it appears on the face of the record. Once again, Respondent strongly disagrees.

Standard of Review

Claims of ineffective assistance of counsel generally cannot be raised for the first time on direct appeal because the trial court has not ruled on the issue. There are rare exceptions where appellate counsel may successfully raise the issue on direct appeal because the ineffectiveness is apparent on the face of the record and it would be a waste of judicial resources to require the trial court to address the issue. Blanco v. State, 507 So.2d 1377, 1384 (Fla.1987); Gore v. State, 784 So.2d 418, 437-38 (Fla. 2001) ("A claim of ineffective assistance of counsel may be raised on direct appeal only where the ineffectiveness is apparent on the face of the record."). Thus, only in rare cases may an appellate

court address an ineffective assistance claim on direct appeal.

Argument

Recently, in State v. Pearce, 994 So.2d 1094 (Fla. 2008), this Court reaffirmed the heavy burden a defendant must carry in order to prevail on a claim of ineffective assistance of counsel:

> Following Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), this Court held that in ineffective assistance of counsel claims two requirements must be satisfied: (1) the claimant must identify a particular act or omission of the lawyer that is outside the broad range of reasonably competent performance under prevailing professional standards, and (2) the clear, substantial deficiency shown must further be shown to have affected the fairness and reliability of the proceeding so that confidence in the outcome is undermined. See Maxwell v. Wainwright, 490 So.2d 927, 932 (Fla.1986). As to the first prong, the defendant must establish that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687, 104 S.Ct. 2052; see also Cherry v. State, 659 So.2d 1069, 1072 (Fla.1995). There is a strong presumption that trial counsel's performance was not ineffective. See Strickland, 466 U.S. at 690, 104 S.Ct. 2052. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. See id. at 689, 104 S.Ct. 2052; see also Rivera v. Dugger, 629 So.2d 105, 107 (Fla.1993). For the second prong, the reviewing court must determine whether the deficiency affected the

> fairness and reliability of the proceeding so that confidence in the outcome is undermined. See Strickland, 466 U.S. at 695, 104 S.Ct. 2052. "Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable." Id. at 687, 104 S.Ct. 2052.

State v. Pearce, 994 So.2d at 1099.

Similarly, in Stewart v. Secretary, Dept. of Corrections, 476 F.3d 1193 (11th Cir. 2007), the United States Court of Appeals reminded us that counsel is not required to be infallible:

> The standard for judging counsel's performance is "'reasonableness under prevailing professional norms.'" Chandler v. United States, 218 F.3d 1305, 1313 (11th Cir. 2000) (en banc) (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). The test for reasonableness is not whether counsel could have done something more or different; instead, we must consider whether the performance fell within the broad range of reasonable assistance at trial. Id. Furthermore, we recognize that "omissions are inevitable. But, the issue is not what is possible or 'what is prudent or appropriate, but only what is constitutionally compelled.' " Id. (quoting Burger v. Kemp, 483 U.S. 776, 794, 107 S.Ct. 3114, 3126, 97 L.Ed.2d 638 (1987)).

Stewart v. Secretary, Dept. of Corrections, 476 F.3d at 1209.

Thus, it is well settled that review of counsel's conduct is to be highly deferential, Spaziano v. Singletary, 36 F.3d 1028, 1039 (11th Cir. 1994), and

second-guessing of an attorney's performance is not permitted. White v. Singletary, 972 F.2d 1218, 1220 (11th Cir. 1992) ("Courts should at the start presume effectiveness and should always avoid second-guessing with the benefit of hindsight."); Atkins v. Singletary, 965 F.2d 952, 958 (11th Cir. 1992). Because a "wide range" of performance is constitutionally acceptable, the cases in which defendants can properly prevail on the ground of ineffective assistance of counsel are "few and far between." Rogers v. Zant, 13 F.2d 384, 386 (11th Cir. 1994). A reviewing court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Philmore v. State, 937 So.2d 578 (Fla. 2006).

In the case at bar, Petitioner's counsel could not object to the admission of the photographs of the contents of the backpack for a very good reason: as explained in Point I, supra, the contents were admissible. Counsel cannot be deemed ineffective for failing to make a meritless argument. See Schoenwetter v. State, 46 So.3d 535 (Fla. 2010).

At bar, counsel tested the State's evidence and thoroughly cross-examined the State's witnesses. He provided all that counsel is required to provide under the Sixth Amendment. The fact that Petitioner was found guilty should be attributed to the evidence, not to his attorney. The verdict should be affirmed.

POINT III

REVERSIBLE ERROR DID NOT OCCUR; PETITIONER MADE A KNOWING AND INTELLIGENT WAIVER OF CONFLICT-FREE COUNSEL (Restated).

In his final point on appeal, Petitioner contends he suffered "specific prejudice" when, shortly before trial his attorney, John A. Garcia, was arrested on federal money-laundering charges. Petitioner argues that he was "forced" to "waive any conflict of interest" which occurred as a result of Mr. Garcia's personal problems. Respondent respectfully submits this issue was not addressed by the Fourth District Court of Appeal and therefore should not be considered by this Court. However, in an abundance of caution, Respondent will address the issue and begin by noting it very strongly disagrees with Petitioner's argument.

Standard of Review

Whether a conflict of interest exists is a legal conclusion which is reviewed de novo. Batur v. Signature Properties of Northwest Florida, Inc., 903 So.2d 985 (Fla. 1st DCA 2005).

Argument

In Zerweck v. State Commission on Ethics, 409 So.2d 57 (Fla. 4th DCA 1982), the Fourth District Court of Appeal quoted Justice Terrell of this Court in

City of Coral Gables v. Coral Gables, Inc., 119 Fla. 30, 160 So. 476 (1935) to define what it called "the age-old notion of conflict":

> No principle of law is better settled than that the same person cannot act for himself and at the same time with respect to the same matter as the agent of another whose interests are conflicting. The two positions impose different obligations, and their union would at once raise a conflict between interest and duty and, constituted as humanity is, in the majority of cases duty would be overborne in the struggle.
>
> City of Coral Gables v. Coral Gables, Inc., 160 So. at 479.

Conflicts of interest exists when individuals such as co-defendants have interests in the same matter that are adverse to each other, or where either of them has an interest in the proceeding of the other. See Webb v. State, 433 So.2d 496 (Fla. 1983). With regard to legal representation, a conflict of interest arises when "... one defendant stands to gain significantly by counsel adducing probative evidence or advancing plausible arguments that are damaging to the cause of a codefendant whom counsel is also representing." Id.; Foxworth v. Wainwright, 516 F.2d 1072, 1076 (5th Cir.1975). A lawyer's personal problems, whatever they are, do not rise to the level of a conflict of interest. In Howell v. State, 707 So.2d 674 (Fla. 1998), this Court considered a case in which Attorney Frank Sheffield was appointed to represent the defendant. The Court explained:

> Howell also faced federal charges arising out of much of the same conduct which had given rise to the State's indictment. Sheffield had also been appointed to represent Howell in defense of the federal charges. On March 18, 1993, the state attorney moved to disqualify Sheffield from this case, noting the fact that Sheffield had been allowed to withdraw from the federal prosecution. * * * At the hearing, the prosecutor stated that the State's motion was not predicated upon any belief that Sheffield was not rendering effective assistance but rather had been filed to bring to the court's attention that he had been relieved from representing Howell in federal court. Sheffield explained that he had received a telephone threat during the federal trial and that he had requested leave to withdraw, which had been granted. With respect to the current representation, Sheffield stated:
>
> > I am perfectly willing to continue representing Mr. Howell in this state case. I have tons and tons of discovery. We have taken depositions. I have no qualms whatsoever about my reputation as far as my abilities to represent him. I have handled over a dozen death cases. I have the experience in handling death cases, and I am more than willing to continue representing him. I see no reason why there should be a change at this point.
>
> Howell v. State, 707 So.2d at 677.

This Court affirmed the trial court's denial of the motion to replace Attorney Sheffield, noting that the trial court stated it was satisfied that Sheffield had not been removed from the federal case due to any lack of diligence, and there was no basis to question his performance in the case under review.

In the case at bar, Respondent submits, first, that Mr. Garcia's problems, whatever their extent, do not meet the legal definition of conflict of interest with his client because they are not the "same matter." Mr. Garcia's problems may or may not have "distracted" him – just as the telephoned threat may or may not have distracted Mr. Sheffield – but "distraction" is not the same as actual conflict. The trial court in Howell's case could find no lack of diligence on Sheffield's part, and, unless the trial court in the case at bar found some lack of diligence on the part of Mr. Garcia, it simply could not remove him against Petitioner's wishes without violating Petitioner's Sixth Amendment right to counsel.

Respondent further submits that even if an undeniable, actual conflict of interest existed in this case, Petitioner repeatedly waived it. Clearly, it is possible for an actual conflict of interest to impair the performance of a lawyer and ultimately result in a finding that the defendant did not receive the effective assistance of counsel. See, e.g., Lee v. State, 690 So.2d 664, 667 (Fla. 1st DCA 1997). At the same time, the right to counsel is so well established that a defendant may waive his or her fundamental right to conflict-free counsel. Larzelere v. State, 676 So.2d 394, 403 (Fla. 1996). Mr. Garcia summed up the situation perfectly:

MR. GARCIA: I mean, obviously, Nick has the

> option, I believe, and I think the case law does back me up, he has the option until I actually do whatever I do in regards to settlement of my case, to have representation of an attorney of his choice.
>
> (T 47)

"For a waiver to be valid, the record must show that the defendant was aware of the conflict of interest that the defendant realized the conflict could affect the defense, and that the defendant knew of the right to obtain other counsel." Id.; see also United States v. Rodriguez, 982 F.2d 474, 477 (11th Cir.1993), cert. denied, 510 U.S. 901, 114 S.Ct. 275, 126 L.Ed.2d 226 (1993). "It is the trial court's duty to ensure that a defendant fully understands the adverse consequences a conflict may impose." Larzelere, 676 So.2d at 403; see also Winokur v. State, 605 So.2d 100 (Fla. 4th DCA 1992), rev. den'd, 617 So.2d 322 (Fla.1993).

In the case at bar, Petitioner, Petitioner's father, two Assistant State Attorneys, Mr. Garcia, Richard Lubin (who was Mr. Garcia's attorney), and the trial judge engaged in a 20-page colloquy (T 43-64) in which every possible ramification of Mr. Garcia's federal case was discussed. Petitioner insisted time and again that he wanted John Garcia to represent him. He acknowledged to Garcia and separately to the trial judge, that he would not be able to say later, "I changed my mind." Even when the trial judge reminded Petitioner that he was

facing a mandatory life sentence, his answers did not change (T 52-53). Short of a hand appearing out of the ether and writing on the courtroom wall, it is difficult to imagine a more profound warning.[1]

The record shows without question that Petitioner fully understood Mr. Garcia's personal problems, and nevertheless wanted Mr. Garcia to represent him at trial. Mr. Garcia was fully qualified to do so at that time. If the trial court had imposed substitute counsel against Petitioner's clearly-expressed wishes, there is no question that it would have violated his right to counsel. Here, the trial court proceeded legally. There is no error, and, if the issue is considered at all by this Court, the trial court should be affirmed.

[1] The Moving Finger writes; and, having writ,
Moves on: nor all your Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all your Tears wash out a Word of it.
--Omar Khayyam, *The Rubaiyat*
(The reference is to Belshazzar's Feast, The Book of Daniel, Ch.5, v. 1-4.)

CONCLUSION

WHEREFORE based on the foregoing arguments and the authorities cited herein, Respondent respectfully contends the decision of the Fourth District Court of Appeal should be AFFIRMED.

Respectfully submitted,

BILL McCOLLUM
Attorney General
Tallahassee, Florida

CELIA A. TERENZIO
Bureau Chief
Florida Bar No. 0656879

JOSEPH A. TRINGALI,
Assistant Attorney General
Florida Bar No. 0134924
1515 North Flagler Drive
Suite 900
West Palm Beach, FL 33401
Telephone (561) 837-5000

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on the Merits" was sent by United States mail to RICHARD L. ROSENBAUM, Esq., Attorney for Appellant, ARNSTEIN & LEHR, LLP, 200 East Las Olas Boulevard, Suite 1700, Las Olas Centre II, Fort Lauderdale, FL 33301 on December 29, 2010.

_____

JOSEPH A. TRINGALI,
Assistant Attorney General
Counsel for Respondent

CERTIFICATE OF TYPE FACE AND FONT

Counsel for the Respondent/Appellee hereby certifies, pursuant to this Court's Administrative Order of July 13, 1998, that the type used in this brief is Times Roman 14 point proportionally spaced font.

_____

JOSEPH A. TRINGALI,
Assistant Attorney General
Counsel for Respondent

IN THE SUPREME COURT OF THE STATE OF FLORIDA,

NICHAOLAS AGATHEAS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC10-602

****

APPENDIX

****

BILL McCOLLUM
Attorney General
Tallahassee, Florida

CELIA A. TERENZIO
Florida Bar No. 0656879
Bureau Chief

JOSEPH A. TRINGALI
Assistant Attorney General
Florida Bar No. 0134924
1515 North Flagler Drive
West Palm Beach, FL 33401
Telephone (561) 837-5000

Counsel for Respondent