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IN THE SUPREME COURT OF FLORIDA

DWIGHT T. EAGLIN,

Petitioner,

v.

CASE NO. SC13-1785  
L.T. No. 03-CF-1525  
DEATH PENALTY CASE

MICHAEL D. CREWS, ETC.,

Respondent.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**  
**AND**  
**MEMORANDUM OF LAW**

COMES NOW, Respondent, Michael D. Crews, Secretary, Florida Department of Corrections, by and through the undersigned counsel, and hereby responds to the Petition for Writ of Habeas Corpus filed in the above-styled case. Respondent respectfully submits that the petition should be denied, and states as grounds therefore:

**FACTS AND PROCEDURAL HISTORY**

This Court summarized the relevant facts in its opinion affirming Petitioner's judgment and sentence of death:

FACTS

Dwight T. Eaglin, who was serving a life sentence for murder when the crimes occurred in this case, was convicted of the June 11, 2003, murders of correctional officer Darla K. Lathrem and inmate Charles Fuston. The conviction and death sentence of codefendant Stephen Smith, who was tried separately for the murder of Lathrem, was affirmed by this Court and rehearing was denied. See Smith v. State, 998 So. 2d 516 (Fla. 2008), cert. denied, --- U.S. ----, 129

S. Ct. 2006, 173 L.Ed.2d 1101 (2009) (No. 08-8829). A third codefendant, Michael Jones, pled guilty to first-degree murder and received a life sentence. Id.

The evidence at trial established that in 2003, the Charlotte Correctional Institution was undergoing a renovation of the inmate dormitories. That same year, Eaglin, Smith, and Jones, who were part of a group of inmates permitted to participate in the renovation process, began planning an escape attempt. With regard to the escape plans, the inmates constructed an escape ladder and a metal tool that would hook to the outer lights of the prison, but the tool was destroyed a month before the attempted escape. Eaglin blamed Fuston and John Beaston, another inmate, for destroying the tool.

Two inmates, Kenneth Christopher Lykins and Jesse Baker, testified to what they heard about the escape plans. Lykins testified that he overheard Eaglin, Smith, and Jones talking about their upcoming escape. Specifically, Eaglin stated that he would kill Fuston before he left because "he didn't like the way he disrespected him." Lykins also overheard Eaglin state that he would kill anyone who tried to stop him from doing what he was going to do. On cross-examination, Lykins, a twelve-time convicted felon, was impeached with an affidavit in which he denied knowing anything about the escape or the killing of Lathrem and Fuston. He explained this prior inconsistency by stating he had been concerned with his own safety.

Jesse Baker, another inmate and nine-time convicted felon, also testified to overhearing the escape plans. He specifically heard Eaglin, Smith, and Jones stating that "they would kill any bitch that got in their way." Further, Baker testified that Eaglin wanted to "straighten" Fuston, which indicated an intent to kill. Baker was impeached with the fact that he suffered from severe depression and was previously housed in the psychiatric dorm and the crisis unit of the prison.

Additional testimony from correctional officers working at the time of the escape attempt established that on June 11, 2003, Eaglin was observed attempting

to jump on the outer-perimeter fence of the prison. When officers responded to the scene, Eaglin was sprayed with chemical agents and subdued. Thereafter, Officer Lathrem was found in a mop closet, huddled in a fetal position with injuries to her head area. A medium-sized sledgehammer was located near her body. Fuston was located in another cell lying on the floor with blood coming from underneath his head. He was unconscious but still breathing at that time. Beaston was found conscious in a secured cell with a large wound in the middle of his forehead. Beaston was the only surviving victim of the attacks.

The morning after the attempted escape, Eaglin was questioned regarding the murders. Eaglin stated he wanted the "chair," and that he "tried to kill those three people." Eaglin also admitted that he tried to "jump the fence."

With regard to the injuries suffered by the victims, the medical examiner, Dr. R.H. Imami, testified that Lathrem's injuries included a hemorrhage in her right eye, two injuries on the right side of her head, and injuries on her face. Dr. Imami found no evidence of defensive wounds or injuries and concluded that skull and brain injuries were the cause of Lathrem's death. The cause of these injuries was heavy, blunt force trauma. Dr. Imami opined that Lathrem was struck at least three times and that any of the blows would have caused her death. Finally, Dr. Imami stated that she believed the sledgehammer entered into evidence caused the injuries.

Dr. Imami also conducted the autopsy of Fuston. Fuston had injuries to the right and left sides of his face and head, the back of his head, and his mouth, in addition to skull fractures caused by blunt trauma. In total, Fuston suffered three to four fatal blows. Dr. Imami did not see typical defensive wounds but she observed a small skin scrape on the back of Fuston's left hand. She opined that the scrape could have been caused when he fell or during subsequent medical intervention. Ultimately, Dr. Imami concluded that skull and brain injuries by blunt-force trauma to the head were also the cause of Fuston's death and that the trauma was caused by a hammer.

Upon the testing of evidence obtained during the investigation of the murders, Lathrem's DNA was discovered on the sledgehammer that was near her body. Both Lathrem's and Fuston's DNA were located on the pants Eaglin wore on the day of the murder. Lathrem's DNA was also located on Eaglin's left boot. On cross-examination, defense counsel referred to earlier testimony of a corrections officer who testified that he assisted in removing Lathrem's body from the mop closet and then escorted Eaglin to the visiting park. The crime laboratory analyst conceded that this scenario presented the possibility of cross-contamination between Lathrem's blood and Eaglin's clothes. She also stated that she did not analyze every item sent to her but she matched the DNA profile of Lathrem to DNA found on codefendant Smith's right shoe.

The defense presented no witnesses but moved for a judgment of acquittal, which was denied by the court. The jury convicted Eaglin of the first-degree murders of Lathrem and Fuston.

During the penalty phase, the State presented evidence of Eaglin's prior violent felony for which he was incarcerated at the time of these murders. Michael Marr, an assistant state attorney, testified that he had previously prosecuted Eaglin for the first-degree murder of John Frederick Nichols, Jr., who died from multiple stab wounds. On January 10, 2001, Eaglin was sentenced to life imprisonment without the possibility of parole for that murder. The State also presented three victim impact witnesses regarding Officer Lathrem.

The defense presented the testimony of witnesses Daryl McCasland, Lance Henderson, Greg Giddens, James Aiken, and Eaglin himself. The theme of the mitigation presentation was that the conditions at the correctional facility contributed to the occurrence of the crime. McCasland, a senior prison inspector, testified that he had several administrative concerns regarding the prison, including the lack of key control. Lance Henderson, a corrections officer working at Charlotte Correctional, testified that he

had filed an incident report prior to the murders regarding his concerns about the limited number of officers on duty for the nighttime work detail. Henderson believed the working environment was unsafe.

Greg Giddens, a corrections officer at Charlotte Correctional at the time of the murders, testified that he was also concerned about his safety. He voiced his concerns to the officer in charge. Giddens also stated that the classification of certain inmates was downgraded so they could be in the open population or assigned work detail.

Finally, James Aiken, president of a prison consulting firm, testified that the incident at the prison was facilitated by a failure of systems. He also stated that the classification of Eaglin was not handled properly and that several inmates had access to tools useful for escape activity and for causing violence. The inmate accountability, security staffing, and monitoring systems also failed.

Before Eaglin's testimony, defense counsel notified the court that they would not be presenting mental mitigation or mitigation evidence as to Eaglin's childhood. Eaglin then testified that he had been in prison since 2001. He stated that the guards would beat and kill inmates. He also stated that after the murders he was kept in a cell for thirty-four days in boxer shorts with no toilet paper, soap, or toothpaste and the assistant warden told him that he would die in that cell.

The jury recommended that Eaglin be sentenced to death for both murders by a vote of eight to four on each murder. Following a Spencer [FN1] hearing, the court entered its sentencing order. The court found the following aggravators as to the murder of Lathrem: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment; (2) Eaglin had a prior violent felony conviction; (3) the murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; (4) the murder was cold, calculated, and premeditated (CCP); and (5) the victim was a law enforcement officer engaged in the

performance of legal duties (merged with escape from custody). As to the murder of Fuston, the trial court found: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment; (2) the defendant had a prior violent felony conviction; and (3) the murder was CCP. In mitigation, the court found after reviewing a presentence investigation (PSI) report that "Eaglin suffered from a severely abusive childhood with a severely dysfunctional family." This mitigator was given some weight. However, the court rejected the proposed mitigators stemming from the allegations of prison negligence. Finding that the aggravators outweighed the mitigators, the court sentenced Eaglin to death.

FN1. Spencer v. State, 615 So. 2d 688 (Fla. 1993).

Eaglin v. State, 19 So. 3d 935, 939-41 (Fla. 2009).

On direct appeal to this Court, Eaglin raised six issues for review:

ISSUE I: THE COURT BELOW ERRED IN REFUSING TO PERMIT DEFENSE COUNSEL TO IMPEACH THE CREDIBILITY OF STATE WITNESS JESSE BAKER BY ASKING HIM ABOUT A DISCIPLINARY REPORT THAT HAD BEEN FILED AGAINST HIM FOR LYING TO A CORRECTIONAL OFFICER.

ISSUE II: THE COURT BELOW ERRED IN REFUSING TO ADMIT INTO EVIDENCE AT PENALTY PHASE THE TAPE OF THE NEWS REPORT INVOLVING "JANE," A FORMER TRAINING ASSISTANT AT CHARLOTTE CORRECTIONAL INSTITUTION.

ISSUE III: THIS COURT CANNOT HAVE CONFIDENCE IN THE RELIABILITY OF THE SENTENCING OUTCOME IN THIS CASE, BECAUSE NOT ALL AVAILABLE MITIGATING EVIDENCE WAS FULLY DEVELOPED AND PRESENTED TO APPELLANT'S JURY AND TO THE SENTENCING COURT, AND THE SENTENCING COURT FAILED TO GIVE ADEQUATE CONSIDERATION TO ALL AVAILABLE MITIGATING EVIDENCE PRESENT IN THE RECORD.

ISSUE IV: THE COURT BELOW ERRED IN USING DWIGHT EAGLIN'S SUPPOSED LACK OF REMORSE AGAINST HIM IN SENTENCING MR. EAGLIN TO DEATH.

ISSUE V: THE EVIDENCE PRESENTED BELOW WAS INSUFFICIENT TO SUPPORT THE "COLD, CALCULATED, AND PREMEDITATED" AGGRAVATING CIRCUMSTANCE.

ISSUE VI: DWIGHT EAGLIN IS ENTITLED TO LIFE SENTENCES BECAUSE THE FLORIDA DEATH PENALTY STATUTE VIOLATED HIS DUE PROCESS RIGHT AND HIS RIGHT TO A JURY TRIAL WHICH REQUIRE THAT A DEATH-QUALIFYING AGGRAVATING CIRCUMSTANCE BE ALLEGED IN THE INDICTMENT AND FOUND BY THE JURY BEYOND A REASONABLE DOUBT.

(Initial Brief of Appellant). Following this Court's affirmance of the convictions and sentences, Eaglin did not file a petition for writ of certiorari to the United States Supreme Court.

On January 5, 2011, Petitioner filed his initial motion for postconviction relief pursuant to Florida Rule of Criminal Procedure, raising nine claims:

Claim I: Mr. Eaglin is being denied his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and corresponding law because he is being denied access to public records.

Claim II: Requiring the application of Rule 3.851 to Mr. Eaglin violates his rights to due process of law and equal protection.

Claim III: Mr. Eaglin's conviction is unreliable and in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments because of the ineffective assistance of counsel pretrial and during the guilt phase of his trial.

Claim IV: Counsel provided ineffective assistance when they failed to adequately counsel Mr. Eaglin regarding the nature, circumstances and consequences of his limited waiver of penalty phase mitigation and failed

to advise the court of Mr. Eaglin's history of major mental illness and non-compliance with necessary medication before the colloquy [sic] between the court and Mr. Eaglin.

Claim V: Mr. Eaglin was denied an adequate adversarial testing at the sentencing phase of his trial, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Trial counsel failed to adequately investigate and prepare mitigating evidence and to adequately challenge the State's case. As a result, the death sentence is unreliable.

Claim VI: Mr. Eaglin's Fifth, Sixth, Eighth and Fourteenth Amendment rights were violated when forensic evidence was presented as reliable scientific evidence without any foundation that the processes involved are scientifically valid or reliable. Newly discovered evidence now establishes that the forensic evidence presented by the State lacks scientific rigor and its admission at trial violated Mr. Eaglin's due process rights.

Claim VII: The existing procedure that the State of Florida utilizes for lethal injection constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Claim VIII: Dwight Eaglin's constitutional right to a fair trial and due process under the Sixth, Eighth, and Fourteenth Amendments was violated due to the prosecutor's intentional flip flopping and use of inconsistent, irreconcilable and misleading theories used to secure the death sentences in his case.

Claim IX: Mr. Eaglin's trial was fraught with procedural and substantive errors which cannot be harmless when viewed as a whole, since the combination of errors deprived him of the fundamentally fair trial guaranteed under the Sixth, Eighth, and Fourteenth Amendments.

(PCR V2:376-482). The State filed a response March 2, 2011 (PCR V3:533-75), and on May 26, 2011, Eaglin filed an amendment to



his postconviction motion, amending claims I and VII and adding the following two claims:

Claim X: Mr. Eaglin's convictions are materially unreliable because no adversarial testing occurred due to the withholding of exculpatory evidence by the state which violated Mr. Eaglin's rights as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments.

Claim XI: Judge Strickland's appointment of Dr. Harry Krop as a confidential competency expert for Mr. Eaglin's codefendant Michael Jones created an actual conflict of interest where Dr. Krop had served as a confidential mental health expert on Mr. Eaglin's defense team at trial.

(PCR V4:770-812). The State filed a response to Eaglin's amendment to the motion for postconviction relief on July 6, 2011. (PCR V6:1038-1128). Following a case management conference on September 15, 2011, the trial court issued an order granting an evidentiary hearing on claims III(a), IV, and V of Eaglin's postconviction motion. (PCR V8:1454-1556).

The trial court conducted an evidentiary hearing on Eaglin's postconviction motion on February 6-10, 2012 (PCR V16-22:3102-4434), and after the State and defense submitted written closing arguments, on July 23, 2012, the postconviction court entered an order denying relief. (PCR V23-24:4570-979). The appeal from the denial of postconviction relief is currently pending before this Court in Eaglin v. State, SC12-1760.

**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. Valle v. Moore, 837 So. 2d 905 (Fla. 2002). 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.

Petitioner's arguments are based on appellate counsel's failure to raise two sub-issues, each of which will be addressed in turn. However, neither of the issues now asserted would have been successful if argued in Petitioner's direct appeal. 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). As noted above, to obtain relief it must be shown that appellate counsel's performance was both deficient and prejudicial. The failure to raise a meritless issue on direct appeal will not render counsel's performance ineffective. 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). Moreover, an appellate attorney will not be considered ineffective for failing to raise issues that "might have had some possibility of success; effective appellate counsel need not raise every conceivable nonfrivolous issue." Valle, 837 So. 2d at 908.

CLAIM I

**EAGLIN'S CLAIM THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE AN ISSUE REGARDING DR. KROP'S INVOLVEMENT IN A CODEFENDANT'S CASE FOLLOWING EAGLIN'S DEATH SENTENCES IS WITHOUT MERIT.**

In his state habeas petition, Eaglin argues that his appellate counsel was ineffective for failing to identify an alleged conflict of interest involving his confidential mental health expert. Prior to Eaglin's trial, his trial counsel retained Dr. Harry Krop as a confidential mental health expert and indicated that he intended to call Dr. Krop at the penalty phase to establish mental mitigation.<sup>1</sup> (DAR V1:46-47). Subsequently, however, defense counsel stated on the record that he had made the strategic decision, after consulting with his client, not to present any mental mitigation to the jury because it would be "dangerous." (DAR V17:3333-34; V29:1341-43).

On August 18, 2006, months after Eaglin had been sentenced to death (March 31, 2006), and his notice of appeal filed (April 21, 2006), the trial court orally appointed Dr. Krop as a competency expert in the case of one of Eaglin's codefendants,

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<sup>1</sup> Trial counsel attached a report from Dr. Krop to his "Notice of Mental Mitigation" indicating potential mitigating factors: "Mr. Eaglin derives from a dysfunctional family which includes a history of emotional abuse, negative role modeling and domestic violence. . . . [and] Mr. Eaglin suffers with a serious psychiatric disorder. He has been diagnosed with BiPolar Disorder which has often been untreated. Records indicate that the Defendant was not on medication at the time of the alleged offense." (DAR V16:3002-03).

Michael Jones, who was attempting to enter into a guilty plea at that time. (PCR SV9:1423-29). On October 3, 2006, the court issued a written order appointing Dr. Krop in Jones' case. (PCR SV9:1430-32). According to Dr. Krop's billing records, he began reviewing materials in Jones' case on October 21, 2006.

In his habeas petition, Petitioner alleges that his appellate counsel was ineffective for failing to identify the fact that Dr. Krop had been appointed in codefendant Jones' case months after Eaglin had been sentenced to death and filed his appeal because appellate counsel would have been able to raise this alleged conflict of interest as an appellate issue. Petitioner further alleges, without any specificity, that this alleged conflict of interest prejudiced his case. Petitioner has not satisfied his burden under Strickland of establishing deficient performance and prejudice based on this claim. Perhaps recognizing his inability to demonstrate the requirements of an ineffective assistance of counsel claim, Petitioner strains the bounds of reason by arguing that prejudice should be presumed under the standard set forth in United States v. Cronin, 466 U.S. 648 (1984), "due to the level of breach occurring" and claims that Eaglin was actually or constructively denied counsel

on appeal.<sup>2</sup>

The basis of Petitioner's claim of a "conflict of interest" is not the traditional claim involving a conflict of interest with counsel, see generally Cuyler v. Sullivan, 446 U.S. 335 (1980), but rather is based on this Court's decision in Walton v. State, 847 So. 2d 438 (2003), which discussed an expert witness's conflict of interest. In Walton, this Court stated that it was error for the postconviction court to allow the State to present testimony at the evidentiary hearing from Dr. Sidney Merin regarding "what impact, if any, the mitigating evidence obtained during postconviction discovery would have upon a mental health professional's diagnosis of Walton" because Dr. Merin had previously been appointed as a confidential expert to Richard Cooper, Walton's codefendant. Walton, 847 So. 2d at 445-46. This Court stated that because the codefendants' interests were antagonistic to each other and Dr. Merin had consulted with Cooper's defense team, there was a conflict of

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<sup>2</sup> In Cronic, the Supreme Court held that there is an exception to the Strickland standard that spares the defendant of the need to show probable effect on the outcome. Under the Cronic standard, the court will presume prejudice where assistance of counsel has been denied entirely or during a critical stage of the proceedings. Cronic, 466 U.S. at 658. Petitioner's assertion that the Cronic standard applies in the instant case lacks factual and legal support. Contrary to collateral counsel's assertions, Eaglin's appellate attorney was not "functionally and constructively absent" during the appeal, but rather, filed a detailed brief raising six issues.

interest. However, because Walton failed to demonstrate any prejudice from Dr. Merin's postconviction testimony, this Court found the error to be harmless and denied Walton relief. Id. at 446.

In the instant case, Eaglin cannot show either deficient performance or prejudice as required by Strickland. Petitioner appears to argue that appellate counsel should have taken some action to supplement the record on appeal in Eaglin's case to include information from codefendant Jones' case where he ultimately entered into a negotiated plea deal. This argument, however, is clearly meritless as there is no possibility that this information regarding a codefendant's subsequent case would have been relevant to Eaglin's pending appeal and thus, no motion to supplement would have been granted. See generally Fla. R. App. P. 9.200.

Additionally, Eaglin cannot demonstrate that he was prejudiced in any manner by appellate counsel's failure to identify this alleged conflict of interest. As noted, even had Eaglin's appellate counsel attempted to supplement the record on appeal with records from Jones' case indicating that Dr. Krop had been appointed to examine Jones for competency, such a motion would have been denied. Furthermore, the fact that Dr. Krop was subsequently involved with Jones' case does not create

a conflict of interest for Eaglin. As previously noted, in February, 2006, Eaglin's trial counsel made the strategic decision, with Eaglin's approval, to waive the presentation of any mental mitigation from Dr. Krop at the penalty phase. Eaglin was subsequently sentenced to death on March 31, 2006, and filed his notice of appeal on April 21, 2006. Dr. Krop did not become involved in Michael Jones' case until, at the earliest, August 18, 2006. Thus, Eaglin cannot be heard to complain of any "conflict of interest" based on Dr. Krop's subsequent involvement with Jones' case.

Unlike the situation in Walton, Dr. Krop never offered any testimony in the instant case at Eaglin's trial. Although Eaglin's trial counsel attached a copy of Dr. Krop's report to a notice of intent to present mental mitigation, counsel ultimately changed his mind and did not present Dr. Krop's testimony because it was "dangerous." Even had Dr. Krop testified at Eaglin's trial, he was not operating under any conflict of interest at the time as he had yet to be appointed in a codefendant's case. Because Eaglin cannot establish either deficient performance or prejudice, this Court should deny the instant claim.

In a related sub-claim, Petitioner argues that appellate counsel was ineffective for failing to ensure that a "complete"



record on appeal was available for this Court's review as counsel failed to include the Jones' material in Eaglin's record on appeal. Petitioner fails to cite any authority which mandates that a codefendant's unrelated trial records are required to be made a part of his record on appeal. Likewise, Petitioner has failed to offer any support or citations for his assertion that "[t]he lack of appellate advocacy on Mr. Eaglin's behalf is identical to the lack of advocacy present in other cases in which this Court has granted habeas corpus relief." Petition at 27.

Petitioner's claim that appellate counsel was deficient for failing to attempt to supplement the record on appeal with the unrelated Jones' case records is without merit. Appellate counsel's performance in failing to file a meritless motion to supplement the record clearly did not fall outside the range of professionally acceptable performance. Even if this Court were to find that counsel had performed deficiently by seeking to supplement the record with Jones' case records, Petitioner has failed to establish that 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. See Groover v. Singletary, 656 So. 2d 424, 425 (Fla. 1995). At the time of Eaglin's direct appeal, this Court was aware that Jones

received a life sentence as a result of a negotiated plea,<sup>3</sup> and Jones' record indicating Dr. Krop's subsequent involvement in Jones' case would not have affected this Court's decision-making process in Eaglin's appeal. Accordingly, because Petitioner has failed to carry his burden, this Court should deny the instant petition for writ of habeas corpus.

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<sup>3</sup> See Eaglin, 19 So. 3d at 939 ("A third codefendant, Michael Jones, pled guilty to first-degree murder and received a life sentence.").

**CONCLUSION**

In 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 has been furnished electronically to William M. Hennis, III, Assistant CCRC, Law Office of the Capital Collateral Regional Counsel, Southern Region at [hennisw@ccsr.state.fl.us](mailto:hennisw@ccsr.state.fl.us), this 4th day of November, 2013.

**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(1).

Respectfully submitted,

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