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IN THE SUPREME COURT OF FLORIDA

ARTHUR JAMES MARTIN,

Appellant,

v. **CASE NO. SC12-1762**

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Appellant, Arthur James Martin, relies on the Initial Brief to reply to the State's Answer Brief with the following additions to ISSUE I:

ARGUMENT

ISSUE I
ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN MAKING IMPROPER FINDINGS OF FACT AND GIVING INSUFFICIENT CONSIDERATION IN MITIGATION TO MARTIN'S RETARDED INTELLECTUAL FUNCTIONING.

As Martin acknowledged in the initial brief, his expert, Dr. Bloomfield, was unable to diagnose Martin as mentally retarded. (IB 18) The State implies that Bloomfield made an assessment and concluded Martin did not satisfy the legal requirements of a diagnosis of mental retardation before age eighteen and significant

limitations in adaptive functioning. (AB 23-25) In fact, Bloomfield was unable to assess those two prongs of the legal requirement for mental retardation due to lack of information due to destroyed school and other records. (IB 18) (T12:722-727) A failure of proof due to an evaluation on complete credible information is different from a failure of proof because no information to evaluate is available because of destruction.

Footnote six in the trial court's sentencing order reflects that the trial judge did not understand Dr. Bloomfield's report and testimony, as discussed in the initial brief. (R5:855-856) (IB 19-20) The footnote incorrectly states that Dr. Bloomfield administered the WAIS-R and Martin scored an IQ of 71. (R5:855-856) Bloomfield administered the only full-scale IQ diagnostic instrument reported in this record, the WAIS-IV, and Martin scored a 54. (R5:802-809; T12:730, 742-743) The State makes no attempt to defend this statement in the trial court's sentencing order. (AB 23-28) The State's attempt to find support for the trial court's order because the footnote did not state that the 71 and 94 scores were on IQ were any more than screening tests. (AB 25-26) This lack of acknowledgment that the scores were from screens is indicative of the problem with the trial judge's understanding of the evidence. Consequently, the trial court discretionary finding as to the weight of the mitigator is not entitled to deference.

On page 26 - 27 of the answer brief, the State asserts that

the trial court satisfied its assessment of the mitigation in finding the non-statutory mitigator that Martin had low cognitive functioning and affording it "some weight." (AB 26-27)(R5:855-856) First, the trial court's misunderstanding of Bloomfield's report and testimony makes the court's discretionary finding on weight without support. Second, as Martin presented in the initial brief, mental retardation was a significant constitutionally required mitigator even before the cases holding mental retardation as a bar to execution. See, e.g., Penry v. Lynauch, 492 U.S. 302 (1989); Thompson v. State, 648 So.2d 692 (Fla. 1995). As such, evidence supporting a defendant's mental retardation, even if such evidence does not meet the statutory legal requirement for mental retardation, is entitled to be recognized as carrying additional significance and weight. Ibid. In this case, the evidence suggesting mental retardation, an IQ score of 54 that is significantly below the threshold score of 70, is the type of evidence entitled to additional weight and significance. This IQ evidence, while not supporting the application of the constitutional bar to execution because the second and third prong for a retardation diagnosis was not available, is close. This Court applied the extra significance to the age mitigator in cases where youthful defendants were close to the age of the constitutional bar to execution. See, e.g., Bell v. State, 841 So. 2d 329, 335 (Fla. 2003); Urbin v. State, 714 So. 2d 411, 418 (Fla.

1998); Ellis v. State, 622 So. 2d 991, 1001 (Fla. 1993). The same weight and extra significance should be acknowledged and afforded to Martin's low intelligence as a mitigator in this case.

CONCLUSION

For the reasons presented in this Initial Brief and this Reply Brief, Arthur James Martin asks this Court to reverse his death sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Meredith Charbula, Assistant Attorney General, Capital Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, at Capapptlh@myfloridalegal.com as agreed by the parties, and to appellant, Arthur Martin, #436687, F.S.P., 7819 N.W. 228th St., Raiford, FL 32026, on this 25th day of June, 2013.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief has been prepared using 12 point Courier New, a font that is not proportionately spaced.

Respectfully submitted,

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