IN THE SUPREME COURT OF FLORIDA
CASE NO. SC12-205

QUAWN M. FRANKLIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF FIFTH JUDICIAL CIRCUIT FOR LAKE COUNTY, STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

Mark S. Gruber
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
CAPITAL COLLATERAL
REGIONAL COUNSEL-
MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
813-740-3544
Counsel for Appellant

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

PRELIMINARY STATEMENT

This is an appeal of the circuit court's denial of Quawn M. Franklin's motion for postconviction relief brought pursuant to Florida Rule of Criminal Procedure 3.851. References to the record of the direct appeal of the trial, judgment, and sentence in this case shall be referred to as "R" followed by the appropriate volume and page numbers. References to the postconviction record on appeal shall be referenced as "PC" followed by the appropriate volume and page numbers.

REQUEST FOR ORAL ARGUMENT

Given the gravity of the case and the complexity of the issues raised herein, Franklin, through counsel, respectfully requests this Court grant oral argument.

STATEMENT OF THE CASE

Jerry Lawley, a security guard at the Elberta Crate and Box Factory, was shot and killed in the early morning hours of December 29, 2001. *Franklin v. State*, 965 So. 2d 79 (Fla. 2007). On February 1, 2002, a grand jury returned an indictment for Quawn Franklin on one count of attempted armed robbery and one count of first-degree murder. R1/8-9. This was the third violent crime he was alleged to have committed in the span of two weeks. *Franklin,* 965 So. 2d at 84.

Franklin's defense team consisted of Assistant Public Defenders Mark

Nacke (the lead attorney) and William Grossenbacher. PC25/4531, 4534. They were assisted by Investigator J.T. Williams. *Id.* at 4567. By the time of Franklin's trial for Lawley's murder, Franklin's other two cases involving Alice Johnson and John Horan had been resolved with guilty pleas and life sentences. *Id.* at 4533.

The case was tried before the Honorable Mark J. Hill. Jury selection took place on April 19, 2004, and the guilt phase of the trial took place on April 22 and 23, 2004. The jury returned a verdict of guilty on all counts. R11/1140-41. The penalty phase was conducted on April 26, 2004 and ended with a 12-0 death recommendation. A *Spencer*[1] hearing was held on May 6, 2004. The court imposed a death sentence on June 3, 2004. The written sentencing order and judgment and sentence are located at R9/759-781. The judgment and sentence were affirmed at *Franklin v. State*, 965 So. 2d 79 (Fla. 2007).

Postconviction counsel filed a Motion to Vacate Judgment and Sentence, along with a separate motion alleging that Franklin is presently incompetent to proceed in capital collateral proceedings, on November 6, 2008. PC3/437-570. On January 20, 2010, the circuit court conducted a competency hearing wherein three experts testified. PC22/3959-4093. On June 2, 2010, the circuit court issued an order finding Franklin competent to proceed. PC4/741-44. Pursuant to Fla. R.

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

Crim. P. 3.851(g)(11), he was granted sixty days to file an amended postconviction motion. *Id.* at 743. He filed an Amended Motion to Vacate Judgment and Sentence on July 30, 2010, wherein he raised eleven claims. PC5/786-899. The State filed a response on September 27, 2010. *Id.* at 900-34. A case management conference was held on January 25, 2011. PC23/4138-98. On April 13, 2011, the circuit court issued an order summarily denying claims three, four, five, six, seven, eight, and ten. PC6/1065-69. An evidentiary hearing was granted on claims one, two, nine, and eleven. *Id*.

An evidentiary hearing was held on July 11, 2011 and continued on October 19, 2011. PC24/4214-4413; PC25/4414-4515, 4527-4644. Written closing arguments were filed by both parties. PC7/1209-85. The circuit court filed an Order on Defendant's Amended Motion to Vacate Judgment and Sentence on January 4, 2012, and an amended order on January 5, 2012. PC7/1187-1208. A notice of appeal was timely filed on January 26, 2012. *Id.* at 1286-87.

JURISDICTION

This Court has jurisdiction. Art. V, § 3(b)(1) Fla. Const.

STANDARD OF REVIEW

A trial court's determination of competency will be upheld absent a showing of abuse of discretion. *Alston v. State*, 894 So. 2d 46, 54 (Fla. 2004). This Court

applies the competent, substantial evidence standard of review to the trial court's findings when analyzing a competency determination on appeal. *Gore v. State*, 24 So. 3d 1, 10 (Fla. 2009).

Under *Strickland v. Washington*, 466 U.S. 668, 688 (1984), ineffective assistance of counsel claims are a mixed question of law and fact; with the lower court's legal rulings reviewed *de novo* and deference given to factual findings supported by competent and substantial evidence. *Sochor v. State*, 883 So. 2d 766, 772 (Fla. 2004).

SUMMARY OF ARGUMENT

Argument I: Franklin is incompetent to proceed in postconviction. He suffers from a psychotic process and a specific delusional disorder related to religion, which precludes him from having a rational understanding of the proceedings. He has turned all of his decisions over to God, and he does not see a risk in refusing to make decisions about his own future. The circuit court's finding that Franklin is competent is not supported by competent and substantial evidence.

Arguments II and III: Trial counsel provided prejudicial ineffective assistance during the penalty phase. They failed to obtain Franklin's school records and his presentence and predisposition reports from 1993. They did not speak with a single member of his biological family. They did not present any expert testimony

during the penalty phase, including that of Dr. Mason, who conducted a neuropsychological screening of Franklin and could have offered mental health mitigation. They did not follow up on Dr. Mason's recommendation that he receive a comprehensive psychological and psychiatric evaluation. Had counsel conducted a reasonable penalty phase investigation, they would have established the following mitigation: trauma and loss during childhood and adolescence, the lack of a father figure, the illness of his mother, hearing deficits, identification as emotionally disturbed and emotionally handicapped in school records, low intellectual functioning, the lack of a sense of self, and the development of a delusional disorder that eventually led to hallucinations and a series of bizarre behaviors after his arrest. This mitigation, when added to the minimal mitigation that was presented at trial, would likely have altered the jury's appraisal of Franklin's culpability.

Argument IV: Franklin was accused of committing three violent crimes in Lake County over the course of two weeks. Each of these crimes received substantial media attention, with the two non-capital cases receiving arguably more coverage than the capital case. This created unique challenges in selecting a jury; however, trial counsel did not seek a change of venue and their participation in voir dire was limited. In Claim III of his postconviction motion, Franklin argued that trial

counsel provided ineffective assistance during voir dire. In Claim IV he argued that trial counsel provided prejudicial ineffective assistance by failing to file a motion for change of venue. He requested an evidentiary hearing on both of these claims and presented to the court the report of two well-credentialed experts who were prepared to testify about these issues. The circuit court erred when it denied an evidentiary hearing on these claims, which are legally sufficient and not refuted by the record. Furthermore, the court failed to conclusively show that Franklin is not entitled to any relief. To the contrary, the circuit court's order regarding these claims is based on facts not in evidence, unsupported stereotypes regarding the demographics of Lake County and its citizens, and insulting conclusions regarding the defense experts, which are refuted by the record.

ARGUMENT I

THE CIRCUIT COURT ERRED IN FINDING FRANKLIN COMPETENT TO PROCEED IN POSTCONVICTION. COMPELLING FRANKLIN TO PROCEED WHILE HE WAS INCOMPETENT VIOLATED HIS RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

In *Carter v. State*, this Court held that "a judicial determination of competency is required when there are reasonable grounds to proceed in postconviction proceedings in which factual matters are at issue, the development or resolution of which require the defendant's input." 706 So. 2d 873, 875 (Fla.

1997). This requirement has been codified in Fla. R. Crim. P. 3.851 (g).

On January 20, 2010, the circuit court conducted a competency hearing wherein three experts testified. PC22/3959-4093. On June 2, 2010, the circuit court issued an order finding Franklin competent to proceed. PC4/741-44. Franklin seeks review of this finding of competency.

Competency Hearing

The following testimony was presented during the competency hearing:

Glenn Caddy, Ph.D.

Glenn Caddy, Ph.D. is a psychologist with over twenty years of experience. PC22/3963. He became involved in Franklin's case in November 2007 when CCRC-Middle hired him to evaluate Franklin for competency to proceed in postconviction proceedings, and he was later appointed by the circuit court for the same purpose. *Id.* at 3867-68.

Dr. Caddy met with Franklin for two full days (November 27, 2007 and October 7, 2008) prior to the competency hearing. PC22/3967, 3974-75. During the visits, Franklin was "polite, reasonably courteous, and fairly verbal." *Id.* at 3974. He was limited intellectually, and he had "powerful control needs." *Id.* at 3975. He operated in a way that appeared to be "quite strange", and "the strangeness linked to his extreme focus on a rather idiosyncratic strategy of

religion." *Id.* at 3975.

Dr. Caddy spoke with Franklin at length about Franklin's religious beliefs. PC22/3975. He had very little religious training as a young child. *Id.* at 3875. In 2004, while he was awaiting trial in the current case, he reported that God came to him, and he became increasingly absorbed in religion and reading the Bible. *Id.* at 3965. He sang hymns and religious songs, engaged in prayer, and spoke about religion. *Id.* at 3977. Dr. Caddy reviewed a letter written by Darren Camp, an inmate who occupied the cell next to Franklin while he was awaiting trial in 2004, in which Camp reported that Franklin was routinely quoting the Bible, singing religious songs, and speaking about religion. *Id.* at 3977-78, 4002. During the same time period, Franklin reported that he heard singing coming from the corner of his cell, a fire breathing dragon whom he knew to be Satan outside his cell, and an angel in the form of a light. *Id.* at 3965. He recalled another time when he saw a vision of God three days in a row. *Id.* at 3965. Although Franklin was apparently manipulative with regard to other issues in the past, there is no evidence that his focus on religion was ever an attempt at manipulation. *Id.* at 4002.

Franklin's belief system is unconventional. PC22/3981. His religious beliefs are not traditional within any of the standard Christian denominations, and "he would stand out in any religious group as being different." *Id.* at 3988, 4008.

He does not wish to speak with any other religious people, such as priests, ministers, or rabbis, because he does not believe any of these people would be able to offer him anything. *Id.* at 3982. He has reported some visual hallucinations, as well as "conceptive thought insertion" or "insertion type auditory hallucinations." *Id.* at 3981. According to Franklin, God communicates with him at times. *Id.* at 3981. He believes that an evil spirit whom he refers to as "Leviathan" shocks him in his lower legs or ankles to get his attention, so that he can pit him against his belief in God. *Id.* at 3982-83. The shock is painful, and Leviathan will not stop shocking him until he pays attention. *Id.* at 3983. While Dr. Caddy agreed with Dr. Hogan that the hallucination of a fire-spitting dragon, such as Leviathan, would be very unusual, he explained that one cannot make an assertion that just because something is unusual it does not exist in the psychotic process. *Id.* at 3995-96.

As a result of his religious beliefs, Franklin does not wish to involve himself with "worldly concerns" because they take his focus away from his religion, reading the Bible, and thinking about God. PC22/3980-81. He does not wish to take an active role in his defense or any actions that are brought by his attorneys. *Id.* at 3980. He isolates himself on death row, and he tends to keep to himself, a fact which was supported by Jennifer Sagle, the mental health counselor who is attached to death row. *Id.* at 3980-81, 3985. He had the television removed from

his cell because it is a "worldly thing." *Id.* at 3981. Ms. Sagle confirmed that he neither has nor wants a television and that he is consumed by his religious process. *Id.* at 3985-86. He sees her occasionally, but he claims that there is nothing wrong and he is doing fine. *Id.* at 3894-85. They have had lengthy conversations about his religion. *Id.* at 3985. He is sometimes frustrated with God because God is not telling him what to do. *Id.* at 3985. He believes that God is probably testing his faith, and that he has to be patient because God will eventually talk to him and tell him what to do. *Id.* at 3985. In the alternative, if God does not tell him what to do, he believes that it would be okay because he will go to heaven a lot faster. *Id.* at 3985. He is frustrated because he wants more knowledge, so he constantly reads the Bible. *Id.* at 3985.

During Dr. Caddy's competency examination, Franklin was resistant to psychological testing. PC22/3978. Franklin explained that participating in testing would be the equivalent of endorsing the desire of his attorneys to have him completely evaluated, and he does not want his attorneys to do anything for him. *Id.* at 3978. He wants his future to depend solely on what God wants. *Id.* at 3978. He does not want to die, but if God wants him to die, he will readily submit to God's will. *Id.* at 3988. Therefore, while he was polite and willing to speak with Dr. Caddy at great length about his background information and God, he would not

participate in a formal assessment. *Id.* at 3978.

Franklin's attorney was present during Dr. Caddy's second visit with Franklin. PC22/3979. Franklin was polite, and he did not object to his attorney's presence. *Id.* at 3979. However, he does not want anybody to do anything for him. *Id.* at 3980. He believes that when God is ready God will tell him what to do and he will follow God's instructions. *Id.* at 3980. He made it clear to his attorney that:

> God had a plan for him and that God would let him know if and when he should be involved in helping [her], and that given that he had not received such a message from God and God did not wish him to participate in these worldly things, he was glad to see [her] but . . . he did not wish [her] to be doing anything for him in any regard.

Id. at 3979.

During that visit, Franklin's attorney spoke with him about signing the verification for his Rule 3.851 motion. PC22/3979. Consistent with his desire not to cooperate with his attorneys, Franklin said that signing the verification would cause him to participate at some levels with acts that he did not wish to participate in. *Id.* at 3980. Dr. Caddy cannot see any secondary gain connected to his refusal to sign the verification. *Id.* at 3980. He does not believe that Franklin's attorneys would be able to talk him out of his delusions. *Id.* at 3987.

Dr. Caddy diagnosed Franklin with a psychotic process and a specific delusional disorder related to religion. PC22/3987. The delusions he is

experiencing are real. *Id.* at 55. His mental illness is self-induced, meaning that he started to use religion as a coping vehicle for the stress he was under and it "accelerated from there into an idiosyncratic way of thinking about religion," on top of which a whole world was built. *Id.* at 3987. Fixed delusions such as these sustain themselves because they help individuals make sense of their world. *Id.* at 3987. At times they provide the individual with relief, while at other times they create great chaos for the individual. *Id.* at 3987. In Franklin's case, his delusional disorder is an unintentional coping mechanism, which increases his sense of personal worth, gives him something to believe in, and causes him to feel that he is accomplishing something good. *Id.* at 3987.

Although Franklin has been offered psychiatric medications, he has not taken any for quite some time. PC22/3983. In the past, he has been given the antipsychotic medication Haldol, which presumably would have been prescribed to treat his hallucinations. *Id.* at 3983-84. He informed Dr. Caddy that he does not think he needs psychiatric medications, he does not believe that they will do him any good, and he does not like their effect. *Id.* at 3983. Dr. Caddy agrees that these medications would not help Franklin. *Id.* at 3984. His hallucinatory phenomenon is minimal, and it occurs when he is extremely stressed, rather than being a recurrent force. *Id.* at 3997. The main issue with Franklin is his delusional

thinking, which he has experienced for a long time. *Id.* at 3997-98. While medications offer some assistance to patients who are experiencing an active hallucinatory process, fixed delusions do not respond to medications. *Id.* at 3984.

Dr. Caddy opined that Franklin is not competent to proceed in postconviction proceedings. PC22/3967. Despite having a factual understanding of the pending proceedings, Franklin's mental status "precludes a rational understanding or interpretation of the significance to him of that process." *Id*. at 3967. He has turned all of his decisions over to God, and he does not see a risk in refusing to make decisions about his own future. *Id.* at 3967. He does not feel that any of these proceedings matter because God will show him the way. *Id.* at 4017. He does not believe that God brought his attorneys to him, but rather that he must keep away from everything worldly until God lets him know what is His will. *Id.* at 4017. If God wants him to proceed in his postconviction appeals, He will let Franklin know. *Id.* at 4018. If God does not tell him, it is because God wants him to die, and he will go to God on the other side. *Id.* at 4018. In the meantime, he believes his job is to praise God, read and study the Bible, and be prepared when God is ready to tell him what to do. *Id.* at 4019. Although his knowledge and intellect would allow him to disclose to collateral counsel facts pertinent to the postconviction proceeding at issue, "[h]e is barred from doing so because the delusion precludes him from

being a party to the process." *Id.* at 4019.

James T. Hogan, Ph.D.

James T. Hogan, Ph.D. is a psychologist with approximately thirty years of experience who retired from the Department of Corrections [hereinafter DOC] in 2006. PC22/4026-28. He first met Franklin at Sumter Correctional Institution in 1996. *Id.* at 4028. Franklin was in "close management," where Dr. Hogan or one of the staff visited weekly to check on the inmates. *Id.* at 4028. Dr. Hogan saw signs in the 1990s that he was malingering. *Id.* at 4029.

Dr. Hogan met Franklin again for 45 minutes in 2004 when he was appointed to evaluate him prior to trial. PC8/1462; PC22/4042. He reviewed his medical records from the DOC, which showed that he was frequently in conflict with security. *Id.* at 4030. He had 67 disciplinary reports. PC8/1463. He made suicidal gestures. PC7/72. He was transferred to crisis units four times, and each time he was discharged within ten days, which would not have been enough time to deal with a genuine psychosis. *Id.* at 4031. On one occasion when he was sent to a crisis unit, he claimed that "they" lied about him, that there was nothing wrong with him, that he was not hearing voices, and that he did not need any medication or treatment. *Id.* at 4031. Based on his history with Franklin, as well as Franklin's reluctance to provide information, Dr. Hogan concluded that Franklin was

competent because he "could not find any evidence that he was actually incompetent." PC8/1436, 1465-66.

Dr. Hogan's final meeting with Franklin occurred in January 2009 and lasted 45 minutes. PC22/4032, 4042. Franklin remembered Dr. Hogan, and he seemed to be in a "pretty good" mood. *Id.* at 4032. Dr. Hogan could not get him to talk about why he was there, the death penalty, or what he was facing. *Id.* at 4032. He would not provide any direct answers to Dr. Hogan's questions about his legal situation, the death sentence, or his understanding of the proceedings. *Id.* at 4033-34. Franklin was concerned about pleasing God. *Id.* at 4032. He kept saying that "he has to run the race," that "he has to do God's will," and that he has to do the right thing. *Id.* at 4032. He spoke about seeing a satanic, fire-spitting dragon known as "Leviathan," who "tempts him not to follow God's rules." PC8/1433. When Dr. Hogan asked Franklin about dying, he maintained:

> [T]hey can't do anything to me, my father's in control. Everything is going to be all right if I continue to run the race . . . I can't die. I got life. If I rebel and be disobedient, I'll die. If I'm obedient, nothing else matters.

Id. at 1433.

Dr. Hogan also spoke with Jennifer Sagle, a psychological specialist who has maintained mental health contact with Franklin since late 2007. PC8/1432. Ms. Sagle confirmed that he spends most of his time studying the Bible, and he does not

have a television. PC22/4048.

Dr. Hogan relied on DOC records that indicated that at some points Franklin claimed that he was not hearing voices, while at other times he claimed that he was hearing voices. PC22/4036. He acknowledged that the differences in Franklin's answers from day to day regarding whether he was hearing voices could be explained by the way the questions were asked. *Id.* at 4040. For example, the questions, "Are you hearing voices that aren't real?" and "Is God speaking to you?" are very different questions, and may require different answers, as delusions are very real to people who experience them. *Id.* at 4038-40. The exact wording of the questions that were posed to Franklin was not included in the records. *Id.* at 4039.

Franklin has long refused medication because, as he stated, "It's sorcery. Medication is a delusional drug." PC8/1434. He took medications such as Haldol and Lithium in the past, but usually after a while he would quit. PC22/4040. Haldol and Lithium are heavy antipsychotic medications with serious side effects, such as extreme sleepiness and malaise, especially if a person does not need them. *Id.* at 4041-42. Some patients who actually need these medications do not want to take them because of their side effects. *Id.* at 4041. Furthermore, because of their sedating effect, these medications are sometimes prescribed in the prison setting as a form of behavior control. *Id.* at 4041-42. It is debatable whether antipsychotic

drugs would be effective in treating a person who is suffering from a delusional disorder, as opposed to schizophrenia. *Id*. at 4042.

Dr. Hogan does not believe that Franklin is suffering from a delusional system, which prevents him from assisting his attorneys. PC22/4034. In Dr. Hogan's opinion, Franklin's reference to following God's word is more of a religious issue than a delusion. *Id*. at 4037. He explained why, in his opinion, Franklin "just doesn't feel crazy":

> Usually, the delusional people that I've ever seen, when they do get discussing delusions it starts to leak out all over the place and it gets very strange and so forth. But he just mentions what he says to God and what God says to him as just for him only, I guess. It just – it's difficult to say but *it just doesn't feel crazy. It just doesn't feel delusional*.

Id. at 4034-35 (emphasis added).

Dr. Hogan also cited the events that transpired in March of 2004 as "strong evidence that Franklin is not always truthful." PC8/1436. Dr. Land saw Franklin in 2004 and administered four malingering tests, which provided evidence that he was malingering. *Id.* at 1437. As further evidence that Franklin was malingering, Dr. Hogan relied on a letter written by fellow inmate Darren Camp to Assistant State Attorney Gross in March 2004. *Id.* at 1437; PC22/4043. According to the letter, Franklin informed Camp that he was trying to show that he was crazy so that he could delay his upcoming trial. PC8/1437.

Franklin did not demonstrate to Dr. Hogan that he has a factual or rational understanding of postconviction proceedings. PC22/4055-56. However, Dr. Hogan's opinion regarding Franklin's competency in 2009 is the same as his opinion regarding his competency in 2004; that Franklin is competent and malingering. *Id.* at 4049-50.

Ava Land, Ph.D.

Ava Land, Ph.D. is a practicing psychologist with seventeen years of experience. PC22/4061. She evaluated Franklin in 2004 for competency to stand trial, and she concluded that he was malingering symptoms of mental illness. *Id*. at 4062, 4065. She found indications in his DOC records of malingering. *Id.* at 4063. Franklin admitted to her in 2009 that he has "faked crazy" in the past. *Id.* at 4065.

Dr. Land evaluated Franklin again in 2009. PC22/4062. She saw him three times for a total of six hours and reviewed numerous documents, which were provided to her by CCRC-Middle. *Id* at 4062. Franklin is not currently taking psychiatric medication. *Id.* at 4063. He claims that he is not crazy or mentally ill- a claim that Dr. Land believes. *Id.* at 4065. Dr. Land described his demeanor as "pleasant, courteous, [and] cooperative to some extent." *Id.* at 4067. He would not answer questions that were directly related to competency, the criminal adjudication process, or how his attorney was trying to help him. *Id.* at 4067. His concentration

and memory functioning are deficient with regard to some tasks, especially those that are related to his legal circumstances or the adjudication process. PC8/1445. He is not suicidal, and he does not want to be executed. PC22/4079.

Franklin's "[t]hought content revealed an obsessive preoccupation with religious themes and a rigid belief system involving Christian principles and Biblical scripture." PC8/1445. He reads the Bible and memorizes scripture most of the day, with impressive results. *Id.* at 1446. He is learning the Bible "quite well," and he is able to quote scripture. PC22/4073; PC8/1446. He isolates himself, does not engage in recreational activities, and does not watch television because he does not want to be tempted to stray from God's work. *Id.* at 1446; PC22/4083. He believes that he is supposed to do God's work, which includes devoting himself to studying the Bible and separating himself from worldly concerns. PC8/1446. He does not want to talk to other people about his religion because he feels he will be misled by them, and he wants to become stronger first. PC22/4083. Franklin believes that by doing God's work he will be saved by having eternal life in Heaven. PC8/1446

Franklin related powerful experiences of hearing voices and seeing images of a religious nature. PC8/1445-46. He has seen images of Leviathan, "a form of Satan, who is trying to corrupt him from keeping with God's work." *Id*. at 1446.

One night God tested him with an illusion of someone getting their head cut off, which scared him. *Id.* at 1446. He further reported that when he lays down, the Holy Spirit shocks him to get his attention so that he continues to do God's work, and if he ignores it he keeps getting shocked. *Id.* at 1445.

Franklin refused to discuss legal matters with Dr. Land, or answer any questions about the adjudication process. PC8/1446. He stated that his Father, God, is telling him not to take part in things that are of a worldly nature, such as the judicial process, and he is not supposed to engage in attempts to save his life by avoiding execution. *Id.* at 1446. He does not put faith in his attorney to know what he needs because she is not a vehicle of God. *Id.* at 1446. Franklin does not believe that anything his attorney does will make any difference because whatever happens will be God's will. *Id.* at 1446. If he put his faith in worldly things and fought his death sentence, he believes he would be showing a lack of faith in God. *Id.* at 1446.

Dr. Land testified that Franklin is at peace because he has made a rational choice based on what he believes to be his salvation. PC22/4067. She does not believe he is suffering from a delusional disorder, and she asserted that "if it were true what Dr. Caddy were saying, then most Christians would have to be considered delusional." *Id.* at 4068. Franklin is not grandiose in that he does not see himself as a savior, as someone who is here to help other people, or as someone whom God

has given special powers. *Id.* at 4069. Additionally, there is no persecutory theme. *Id.* at 4069. Dr. Land does not understand what delusion Franklin has. *Id.* at 4069.

Dr. Land also does not believe that Franklin is suffering from thought insertion. PC22/4069. Thought insertion is a hallucination or delusionary experience where a person believes his thoughts are controlled by someone else. *Id.* at 4069. Franklin does not state that he is being controlled, or that God is making him do things. *Id.* at 4069. Instead, he is trying to behave in certain ways that are consistent with what he believes God wants from him. *Id.* at 4069.

Dr. Land further testified that she did not see evidence that Franklin believes God is speaking to him. PC22/4070. Although he has reported hearing voices in the past, he has not stated to Dr. Land recently that he hears God's voice telling him what to do. *Id.* at 4070. He perceives messages from God through the Holy Spirit, which gives him a sense of what he is supposed to do and what path he is supposed to follow. *Id.* at 4070. Unlike people who experience hallucinations and cannot recognize that other people do not hear or see what they are perceiving, he recognizes that his experiences are personal and other people do not hear God speaking to him. *Id.* at 4070-71.

Dr. Land concluded that Franklin is competent to proceed. PC8/1450. She does not agree with the premise that Franklin is incompetent because he has given

up control of his life to God. PC22/4072. In her opinion, his religious beliefs amount to nothing more than religious beliefs. *Id.* at 4075. She believes that he has made rational decisions to conform himself to the ways of Christ and not to cooperate with his attorneys or provide meaningful input. *Id.* at 4072, 4072. "He believes that he is in God's hands, and whatever God has in store for him will happen because there is nothing that any man or woman can do that is more powerful than what his God can do." *Id.* at 4073. He did not tell Dr. Land that God is going to prevent him from being executed. *Id.* at 4073. She does not believe that Franklin is experiencing a "psychotic episode of religious delusions." PC8/1448. Instead, she opined that the belief system Franklin has developed is an adaptive mechanism, which helps him cope with his imminent death. *Id.* at 1450. She acknowledged that "[s]ome amount of denial is necessary to maintain the belief system, and for now, that entails cognitive rejection of the criminal adjudication process that will result in his execution." *Id.* at 1449. In contrast to her findings in her 2004 evaluation of Franklin, Dr. Land does not believe that Franklin is currently malingering. PC22/4080.

Argument

In a brief order following the competency hearing, the circuit court found Franklin competent to proceed, and stated the following:

> After hearing the testimony from the three expert witnesses at the competency hearing and reviewing their written reports, this Court finds that the defendant has the capacity to understand the adversary nature of the legal process and these collateral proceedings; that the defendant has the ability to disclose to his lawyers facts pertinent to these postconviction proceedings.

PC4/743.

During a competency hearing, where there is conflicting expert testimony regarding the defendant's competency, it is the trial court's responsibility to consider all the evidence relevant to competency and resolve the factual disputes. *Alston*, 894 So. 2d at 54. In this case, the circuit court did not elaborate on the reasoning behind its finding, and although the order includes a short synopsis of the testimony that was presented by the three experts at the competency hearing, it is unclear whether the court based its competency determination on Dr. Hogan's testimony that Franklin was malingering or Dr. Land's testimony that Franklin "has made the rational decision to place his trust in God's hands and not actively participate in his postconviction proceedings." PC4/741-44. There is not competent and substantial evidence to support either conclusion. Therefore, the circuit court's findings regarding Franklin's competency constitute an abuse of discretion.

1. Franklin is not currently malingering.

Although there are indications that Franklin malingered or exaggerated mental illness in the past, there is no evidence that he has done so since he has been

on death row. Dr. Hogan is the only one of the three experts who evaluated Franklin in postconviction to conclude that Franklin is currently malingering. For the following reasons, this Court should reject Dr. Hogan's finding that Franklin is currently malingering.

Of the three experts who evaluated Franklin for competency to proceed in postconviction, Dr. Hogan's evaluation was the least thorough. Whereas Dr. Caddy spent a total of two full days with Franklin in 2007 and 2008 (PC22/3967, 3974-75) and Dr. Land spent a total of six hours with Franklin in 2009 (*Id.* at 4062), Dr. Hogan only saw Franklin for forty-five minutes in 2009. *Id.* at 4032, 4042. Furthermore, unlike Dr. Caddy and Dr. Land, Dr. Hogan did not observe Franklin interacting with his attorneys, and he did not speak with Franklin's attorneys about their experiences with him. *Id.* at 4049.

Dr. Hogan relied on the letter written by fellow inmate Darren Camp to Assistant State Attorney Gross in April 2004 as "strong evidence that Mr. Franklin is not always truthful." PC8/1336-37. Camp was a convicted felon who was housed with Franklin in the medical section of the jail due in part to suicidal gestures, and Dr. Hogan evaluated him for competency in December of 2003. PC10/1779-89. In the letter, Camp, who had his own pending felony charges, recounted conversations in which Franklin sought "ways to show staff, the Judge,

and Mr. Gross that he was 'crazy'" so that he could delay his trial. PC13/1337.

Even if Franklin was malingering in 2004, that does not mean that he was not mentally ill, as significant mental illness can coexist with malingering, especially in the forensic context. PC9/1643; PC22/4055. While Dr. Hogan relied heavily on Camp's letter as evidence that Franklin was malingering, he chose to ignore evidence in the letter that Franklin's delusional disorder had already begun to develop prior to trial. For one, Camp's letter demonstrates that Franklin was beginning to focus on religion even before his trial. On April 6, 2004, Camp reported, "Quawn spent much of the last two days singing gospel and saying prayers." PC10/1783. Nowhere in the letter did Camp claim that Franklin was faking religiosity. PC22/4047. Additionally, there is evidence that Franklin was experiencing symptoms of mental illness prior to trial. On April 9, 2004, he told Camp, "I feel like I'm losing it . . . I could go crazy just letting the pressure of this junk get to me." PC10/1878.

Dr. Hogan pointed to the "four excellent malingering tests" administered by Dr. Land in 2004 as "overwhelming evidence that Mr. Franklin was indeed malingering." PC8/1436-37. When Dr. Land administered the M-FAST in 2004, Franklin endorsed a number of unlikely or impossible symptoms, which indicated that he was malingering. *Id.* at 1437. When Dr. Hogan administered the same test

in 2009, the results indicated that he was not malingering. *Id.* at 1437. Dr. Hogan, however, refused to accept the 2009 test results as evidence that Franklin is not currently malingering. *Id.* at 1437; PC22/4053-54. He explained that the reason Franklin performed well on the test in 2009 was that he found out the purpose of the test and knew how to approach it this time around so that it did not indicate that he was malingering. PC8/1437; PC22/4053-54.

Dr. Hogan's refusal to accept the results of the M-FAST in 2009 as evidence that Franklin is not currently malingering is indicative of Dr. Hogan's bias, in that he approached the postconviction examination of Franklin with the assumption that since he was malingering in 2004 he must be malingering today. Apparently, no matter how Franklin scored on the M-FAST, Dr. Hogan had already made up his mind that he was still malingering. If the test itself indicated that Franklin was malingering, then it was the same "excellent" test it was in 2004, which provided overwhelming evidence that Franklin was malingering. On the other hand, if he passed the test, it was because this man with below average intelligence has somehow discovered the purpose of the test and learned how to manipulate the results so that it appears that he is not malingering.

In contrast to Dr. Hogan, Dr. Land, who also found that Franklin was malingering in 2004, does not believe that he is currently malingering. PC22/ 4080.

Dr. Land testified that in 2004, when Franklin was awaiting trial in the instant case, he was looking for a way out of his situation. *Id.* at 4066. He malingered mental illness in an attempt to delay proceedings or be found not guilty. *Id.* at 4066. Dr. Land concluded that today Franklin is a changed man, who is very different from the man he was when she saw him in 2004. PC22/4065. In the past, Franklin's behavior was disruptive because he was adjusting to the fact that he had been caught and was in a very controlled environment. *Id.* at 4066. Since his focus has shifted to religion, his behavior has been less problematic, and he has not exhibited disruptive behaviors for some time. *Id.* at 4066. The profound change in Franklin over the last six years is evidenced by the one disciplinary report he has received since 2004, in stark contrast to approximately 65 disciplinary reports he received while incarcerated between 1993 and 2001. *Id.* at 107; PC8/1444.

Dr. Caddy agrees with Dr. Land that, although Franklin apparently has a history of using manipulative behavior to try to get things that he wanted, his current obsession with religion is not an act or manipulation. PC22/3989, 3991. In contrast to the many disciplinary infractions Franklin received during his previous incarceration, Ms. Sagle confirmed that he was no trouble on death row, and that he was pleasant with her in their encounters. PC22/3985. The results that Franklin has achieved in his Bible study are notable, especially given his IQ of 85. *Id.* at 3989.

He is able to quote portions of the Bible at length, and there is no question that he has spent a significant amount of time reading and re-reading the Bible. *Id.* at 3989. He is able to maintain this level of religious focus and intensity without deriving any benefit within the criminal justice system. *Id.* at 3989, 3993. At the same time, he has continued to deny himself access to situations that would be relatively beneficial, such as having a television or having more communication with other people. *Id.* at 3989. This is particularly remarkable given the fact that, unlike people in fringe religious sects who shun the rest of the world, he does not have the companionship of people who endorse or support his beliefs. *Id.* at 3989.

Although Dr. Caddy and Dr. Land disagree as to exactly what Franklin is currently experiencing, they agree that it is very real to Franklin. PC22/4013, 4080. He is genuinely consumed with religion, and it permeates every area of his life. This is not a case where Franklin puts on an act for the doctors and the attorneys from time to time so as to convince them that he is incompetent.

2. Franklin is suffering from a delusional disorder, which prevents him from having a rational understanding of the pending collateral proceedings.

The U.S. Supreme Court has held that a defendant must be able to effectively communicate with his counsel with a reasonable degree of rational understanding. *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 789 4 L.Ed.2d 824 (1960). "A

defendant's right to the effective assistance of counsel is impaired when he cannot cooperate in an active manner with his lawyer . . . The defendant must be able to provide needed information to his lawyer, and to participate in the making of decisions on his own behalf." *Riggins v. Nevada*, 112 S.Ct 1810, 1820 (1992) (Kennedy, J., concurring in judgment).

A defendant does not lose his right to due process when seeking postconviction relief. Forcing a death row inmate to go forward with proceedings when he lacks "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him" poses an unacceptable risk that he will be deprived of life in violation of the due process clause of the Fourteenth Amendment. *Dusky* v. *United States*, 80 S.Ct. at 789; *Scott v. State*, 420 So. 2d 595 (1982). A defendant has the right to be competent during postconviction proceedings and therefore, he must have the "capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense." *Drope v. Missouri*, 420 U.S. 162, 171, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975). In *Carter*, this Court adopted the "*Dusky*" standard to postconviction competency and determined that in order to arrive at a workable "standard" for competency in the context of a capital postconviction proceeding, it

is necessary to take into consideration the role of the defendant in these proceedings. 706 So.2 d at 875.

Dr. Caddy acknowledged that determining whether Franklin's refusal to cooperate with his attorneys is of his own choosing or a result of his mental illness is moderately difficult. PC22/3986. The difficulty with religious delusions in particular is that society affords people an opportunity to have whatever perceptions about religion they wish to have. *Id.* at 3986. People's religious beliefs range from conservative to "way out there," and everything in between. *Id.* at 3986. It is not always easy to "draw the line between the endorsement of one's religion and the induction of some psychotic process." *Id.* at 3986. People who are extremely religiously focused and become psychotic are much more likely to have religious hallucinations, such as God talking to them. *Id.* at 3996. Because in this particular case Franklin's delusions are religious in nature, it is not surprising that there is disagreement among the experts about whether Franklin is suffering from a delusional disorder or is simply engaging in an unconventional practice of religion.

Dr. Caddy and Dr. Land disagree about whether Franklin's religious beliefs are within the normal range of religious culture. Dr. Caddy described Franklin's religious beliefs as idiosyncratic. PC22/3981. Dr. Land disagrees with Dr. Caddy's statement that Franklin "would stand out in a crowd of Christians." *Id.* at 4082.

She believes that Franklin's understanding of scripture and his religious beliefs are what a lot of Christians do on a daily basis. *Id.* at 4082. According to Dr. Land, "if it were true what Dr. Caddy were saying, then most Christians would have to be considered delusional." *Id.* at 4068.

In fact, there is overwhelming evidence that Franklin's religious experience is extremely unusual, even compared to others who are deeply religious. Some of his more unusual beliefs or experiences are as follows:

- While other religious people seek guidance from religious leaders or clergy, Franklin does not believe they would have anything to offer him. PC22/3982.

- He does not wish to involve himself with "worldly concerns" because they will take his focus away from religion. PC22/3980-81.

- While awaiting trial in 2004, he heard singing coming from the corner of his cell, a fire breathing dragon whom he knew to be Satan outside his cell, and an angel in the form of a light. PC9/1645.

- He saw a vision of God three days in a row. *Id.* at 1645.

- He believes that God communicates directly with him. PC22/3981.

- He sees images of Leviathan, "a form of Satan, who is trying to corrupt him from keeping with God's work." PC8/1446.

- He believes that Leviathan shocks him in his lower legs or ankles to get his attention, so that he can pit him against his belief in God. PC23/3982-83.

> • When he lays down, the Holy Spirit shocks him to get his attention so that he continues to do God's work, and if he ignores it he keeps getting shocked. PC8/1445.
>
> • He believes that God tested him one night with an illusion of someone getting their head cut off. PC8/1446.

There is some grandiosity in Franklin's belief that he has such a powerful individual link to God. PC22/ 4010. According to Dr. Caddy, emotionally healthy people do not actually believe God speaks to them. *Id.* at 4008. Most Christians do not experience visions or shocks from satanic creatures or the Holy Spirit, and most Christians do not abandon all "worldly concerns" in pursuit of religious salvation. These behaviors are in stark contrast to more common phenomenon, such as a religious person seeing a white light on the wall and interpreting it to have some religious meaning, which would still be within the normal range of religious culture. PC22/4009.

Dr. Caddy and Dr. Land are in further disagreement about whether Franklin is suffering from a delusional disorder or simply practicing his religion. Dr. Land opined that Franklin is at peace because he has made a rational choice not to participate in postconviction proceedings based on what he believes to be his salvation. PC22/4067. On the other hand, Dr. Caddy diagnosed Franklin with a specific delusional disorder related to religion. *Id.* at 3987.

Dr. Caddy drew the distinction between a man who studies the Bible in preparation for his death at the hands of the State of Florida, and a man such as Franklin, whose "bid to become God's servant appears to be all consuming." PC9/1646. Certainly, Franklin's delusional disorder provides him with some degree of peace, as delusional disorders help individuals make sense of the world, and can provide them with relief. PC22/3987. His obsessive preoccupation with religion and refusal to participate in postconviction proceedings are not the result of a rational choice. Instead, his condition is the result of a delusional disorder he unintentionally began to develop while he was awaiting trial, as a means of coping with stress. *Id.* at 3987. Franklin's claim that psychiatric medications do not help him is not surprising because fixed delusions do not respond to medications. *Id.* at 3984. He is incompetent because his delusional disorder precludes him from having a rational understanding of postconviction proceedings. PC9/1647.

ARGUMENT II

THE CIRCUIT COURT ERRED IN DENYING FRANKLIN'S CLAIM THAT COUNSEL PROVIDED PREJUDICIAL INEFFECTIVE ASSISTANCE DURING THE PENALTY PHASE OF HIS CAPITAL TRIAL.

Franklin alleged in Claim I of his amended motion for postconviction relief that he was denied his Sixth Amendment right to the effective assistance of counsel during the penalty phase of his trial. PC5/793-801. The circuit court conducted an

evidentiary hearing on this claim. The court found that "[t]rial counsel conducted an extensive investigation into potential mitigating evidence" and concluded that "there is no reasonable probability of a different result had trial counsel performed as alleged by Franklin." *Id.* at 1204-05. Franklin seeks review of these findings.

Penalty Phase Trial Proceedings

This Court summarized the mitigation presented during the penalty phase of Franklin's trial, as well as the findings of the jury and the trial court:

> Defense counsel had subpoenaed Minnie Thomas, the woman who raised Franklin until he was eight years old and whom he called Mom. However, Thomas was either unavailable or unwilling to testify at trial. The court permitted the defense to present Thomas's deposition in lieu of her live testimony. The parties also stipulated to other facts that Thomas would have presented about Franklin's background and family history. The other defense penalty phase witness was Franklin himself who testified about his background and child[hood]. Franklin described the trauma of being forcibly removed from the only family he knew when he was eight years old, being taken to St. Petersburg by his biological mother, and his failed attempts to return to the Thomas family in Leesburg by stealing bikes, cars, and money. Franklin also testified about his experiences in juvenile facilities from age nine, including being physically and sexually abused by older boys in the facilities, and his imprisonment in adult prison at age fifteen.
>
> At the conclusion of the penalty phase, the jury returned a unanimous recommendation of a death sentence. The jury also unanimously agreed that four aggravating factors were present: (1) the murder was committed while Franklin was serving a prison sentence because he was on conditional release at the time of Lawley's shooting; (2) Franklin had previous violent felony convictions, including another capital felony for the murder of Horan; (3) Lawley's murder was

> committed for pecuniary gain; and (4) the murder was cold, calculated and premeditated (CCP). The trial court followed the jury's recommendation and imposed a death sentence. In its sentencing order, the trial court found the same four aggravating factors, rejected Franklin's age as a statutory mitigating factor, and found a number of nonstatutory mitigating factors. The trial court also sentenced Franklin to a consecutive life sentence for the attempted armed robbery of Lawley.

Franklin, 965 So. 2d at 87-88.

Mitigation Witnesses Presented at the Evidentiary Hearing

Family Members[2]

Five of Franklin's family members testified at his evidentiary hearing: his maternal grandmother, Charlie Mae Owens; his second cousin on his mother's side, Tina (Katina) Shorter; his maternal aunt, Michelle Reio; his half sister, Keisha Washington; and his paternal aunt, Georgette Franklin[3]. Each of these individuals would have been willing and able to testify at his trial, but not one of them was contacted by Franklin's trial attorneys. PC24/4236, 4266, 4298, 4316,

[2] In this section, Franklin and many of his family members will be referred to by their first names to avoid confusion.

[3] Georgette works at Personal Enrichment through Mental Health Services (PEMHS), a mental health facility in Pinellas Park. PC-R XXIV, 4343. She looked up Quawn's name in the system, and she could tell that he had been there at some point, although the records were not available because of the amount of time that had passed. *Id.* at 4343-44. She also had two aunts who suffered from mental illness. *Id.* at 4344.

4342. Additionally, although she was unavailable to testify in postconviction, Franklin's paternal aunt, Phynedra, was not contacted by trial counsel, but she would have been available to testify at trial. *Id.* at 4243.

Franklin's mother, Jean (Gloria Jean Collins), had three children: Keisha Washington, the oldest child; Todd (Toddrick) Franklin; and Quawn Franklin, who was the youngest. PC24/4223-24, 4276. Todd and Quawn had the same father, and Keisha had a different father. *Id.* at 4224, 4306. At the time of the evidentiary hearing, Todd was in prison. *Id.* at 4307.

Quawn and Todd's father, Hillard (Lenny), never married Jean. PC24/4224, 4276-77, 4332. Hillard has been to prison more than once, and at the time of the evidentiary hearing he had been in prison for a couple of years. *Id.* at 4330. Hillard lived in St. Petersburg when Quawn was growing up, but Quawn never lived with his father. *Id.* at 4277.

Hillard's younger sister, Georgette, lived down the street from the house where Hillard lived with his wife. PC24/4331. Georgette knew Quawn's brother, Todd, and his sister, Keisha. *Id.* at 4332-33. On the other hand, she did not meet Quawn until he was a teenager. *Id.* at 4333. Although she had a cordial relationship with Quawn's mother, Jean, and they ran into each other in the community, Jean did not talk about Quawn. *Id.* at 4333-34. Georgette and Hillard

did not learn that Quawn was Hillard's son until Quawn was a teenager. *Id.* at 4334, 4349. Georgette first met Quawn shortly after he was released from prison for the first time, and she only saw him a few times before he went back to prison for eight years. *Id.* at 4333, 4335.

Franklin's mother, Jean, suffered from epilepsy and seizures, and she went to All Children's Hospital and Shands Hospital for treatment. PC24/4224. She started having seizures before she had Keisha, and they became more frequent over time. *Id.* at 4226. She experienced grand mal seizures, and although she had seizures throughout the day, it was really bad at night. *Id.* at 4277. She regularly took medication for epilepsy, including Dilantin, and she was taking medication for epilepsy when she was pregnant with Quawn. *Id.* at 4239-40, 4278-79.

When Quawn was a newborn, Jean was living with her grandmother, Lilly Bell Owens. PC24/4226. Jean was sick at the time, and she was raped around the time Quawn was born. *Id.* at 4226-27, 4279. Minnie Thomas, Charlie Mae's cousin through marriage, visited Lilly Bell's house. *Id.* at 4227, 4281, 4309. Minnie asked if she could take Quawn back with her until Jean got better. *Id.* at 4227, 4281. Jean agreed, and Quawn went to live with Minnie in Lake County. *Id.* at 4281. Shortly thereafter, Jean moved to Georgia with Keisha's father, where she lived for six years while Quawn was living in Lake County. *Id.* at 4280.

Minnie and her husband, George, raised Quawn as though they were his parents, but they did not have legal custody of him. PC24/4228-29, 4255, 4281, 4311. Quawn called them "mother" and "daddy". *Id.* at 4229, 4255, 4282. Minnie spoiled Quawn and gave him everything he wanted. *Id.* at 4230, 4256, 4282. Quawn did not visit St. Petersburg while he was living with Minnie. *Id.* at 4229, 4255, 4282, 4310. Charlie Mae, Lilly Bell, Michelle, and Keisha visited Quawn at Minnie's home in Lake County. *Id.* at 4228-29, 4310. His second cousin, Tina, who is approximately four years older than Quawn, also lived in Lake County with her mother for one year, and she visited Quawn at Minnie's house every day during that time. *Id.* at 4253-55. During the time that Quawn lived with Minnie, Tina does not recall Jean visiting or Quawn ever mentioning his mother. *Id.* at 4255.

When Quawn was about eight years old, Jean's health had improved, and she had moved back to St. Petersburg. PC24/4283. Without giving any notice to Minnie, Jean went to Lake County, where she met the sheriff and brought Quawn back to St. Petersburg to live with her. *Id.* at 4230-31, 4243, 4256, 4284. After Quawn moved back to St. Petersburg, Minnie did not visit him there. *Id.* at 4230, 4256, 4285.

Quawn's family in St. Petersburg tried to make him feel comfortable, but he

was never able to adjust to life in St. Petersburg. PC24/4257, 4259, 4284-85. Life was faster in the city than it had been in the country. *Id.* at 4257-58. His sister, Keisha, explained:

> [I]t was hard because he knew – that was the only person he knew at the time was Minnie. That's who raised him. So when he came back to live with my mom, it was kind of hard to adjust.

Id. at 4311. Jean had rules, whereas Minnie did not. *Id.* at 4258. Quawn was quiet and kept to himself. *Id.* at 4258. He tried to run away several times, and he was in and out of juvenile detention centers for stealing bicycles to get back to Leesburg. *Id.* at 4231, 4259, 4271. Keisha recalled that Quawn rode his bicycle on the interstate in an attempt to get back to Minnie's house. *Id.* at 4311. When Quawn was eight or nine years old, he tried to ride his bicycle back to Leesburg, and his aunt Michelle followed him to see how far he would get. *Id.* at 4285.

Once he left Leesburg, most of the family members who Quawn had contact with were female. PC24/4248. One exception was his maternal grandfather, Moes Collins, who Quawn visited two or three times. *Id.* at 4248. Charlie Mae was married to Moes for three years, and she left him because he was abusive. *Id.* at 4248-48. Charlie Mae thinks that Moes had mental issues because he was difficult with people and he would get upset about nothing. *Id.* at 4249.

Franklin suffered from a hearing impairment. Keisha recalled Quawn

having difficulty with his hearing. PC24/4312. He had to sit close to the television and turn in up really loud in order to hear it. *Id.* at 4312. Michelle recalled having to speak loudly to him in one of his ears. *Id.* at 4304-05. As a juvenile, Quawn had tubes put in his ears. *Id.* at 4286, 4304-05.

When Quawn was fifteen years old, he went to prison for eight years. PC24/ 4231, 4260, 4266, 4287, 4313. His brother, Todd, was also in prison during this time, and this caused a lot of stress for their mother. *Id.* at 4244. Charlie Mae, Tina, Keisha, and Michelle did not have any contact with Quawn while he was in prison, although Jean visited him. *Id.* at 4231, 4260, 4287-88, 4313. Whenever Michelle called the prison to set up a visit, the prison told her that he was in lockup, or "the box", and he was not allowed visitors. *Id.* at 4287-88. Georgette did not visit him in prison, but they wrote each other a couple of times. *Id.* at 4336, 4346. Jean had a seizure in her sleep and passed away on July 9, 1994 at the age of 36. *Id.* at 4232, 4289-90, 4313. Quawn was in prison at the time, and he was upset that he could not be with his mother. *Id.* at 4232, 4263.

When Quawn was released from prison, his aunts Georgette and Phynedra went to Leesburg to pick him up. PC24/4336. They brought him to visit with his father and meet some other family members. *Id.* at 4337. He was excited about being home and being around his family. *Id.* at 4336. He wanted to see his

siblings, but he could not see his brother, Todd, because Todd was in prison. *Id.* at 4261, 4289. Quawn was working in Leesburg, but he wanted to have his probation transferred to St. Petersburg. *Id.* at 4313. Phynedra, who was a probation officer, tried to help him get his probation transferred. *Id.* at 4336-37, 4262, 4273.

Georgette also brought Quawn to a coworker's studio in St. Petersburg. PC24/4337. She was able to see Quawn rap that day, which she described:

> He rapped about – he said that he wanted to pull the guts out of some people's stomachs and – it was just really weird because his eyes were rolling back into his head. And he was saying that he wanted to take the blood and – it was just so weird.

Id. at 4338.

He also rapped about the devil. *Id.* at 4338. When Quawn rapped, it seemed like he was not even there. *Id.* at 4338. He moved his hands like he was angry, and he punched his fists in his hands. *Id.* at 4338. Quawn was very different when he was not rapping. *Id.* at 4339. He was happy and excited about seeing his family. *Id.* at 4339. He showed his family a lot of love, and he smiled all the time. *Id.* at 4339.

Georgette recounted Quawn's conversations with her and other family members after he was released from prison. He spoke about the prison guards hitting him, kicking him, and spitting on him, and being locked up in a hole naked with no food. PC24/4338. He said that he was medicated while he was in prison. *Id.* at 4340. He also related that he was hearing voices, and that one of the voices

was the devil telling him to do things. *Id.* at 4339. Quawn said that it was wrong how he was treated in prison, and he seemed relieved to be able to speak about his experiences. *Id.* at 4339-40.

Georgette saw Quawn once more the day after she picked him up. PC24/ 4340. He was in a car with two females. *Id.* at 4341. He was wearing the same clothes that he was wearing when she picked him up, and he smelled like he had not bathed. *Id*. at 4341. She asked him if he was okay, and he said that he was. *Id.* at 4341.

Charlie Mae recalled that after Quawn was released from prison, he visited her house in St. Petersburg. PC24/4232. Her other grandchildren were there, and he was glad to see her and the rest of the family. *Id.* at 4232-33. Quawn said that prison was bad and that they used to put him in the box. *Id.* at 4233. She heard him rap, but she did not know what he was saying. *Id.* at 4234. He also spoke about hearing voices, much like her granddaughter, who has been diagnosed with schizophrenia and bipolar disorder and who also hears voices. *Id.* at 4234.

Tina saw him five or six times in St. Petersburg after he was released from prison. PC24/4260. Tina testified that Quawn did not act the same as before he went to prison. *Id.* at 4263-64. Before he went to prison, he was cool. *Id*. at 4264. After he was released from prison, he was strange. *Id.* at 4263. He acted like

something bad happened to him while he was in prison. *Id.* at 4264. His focus was rapping, and when he rapped, he said strange things. *Id.* at 4260-61. Quawn spoke with Tina about his experiences in prison, and he told her that he was in solitary confinement all the time. *Id.* at 4264-65. They made him take medicine that he did not want to take because they thought he was crazy. *Id.* at 4264-65. When he was released from prison, he threw his medicine away. *Id.* at 4265.

When Quawn was released from prison, Michelle saw him twice in St. Petersburg; once at a cookout and once when he came in a car with some friends. PC24/4288. She testified that his appearance had changed; he was taller, with tattoos that he did not have before, and he wore bandannas. *Id.* at 4295. He stared, and he acted like he was in a daze. *Id.* at 4293-94. He seemed angry. *Id.* at 4296. Although she never saw him rap before he went to prison, after he was released, he rapped about his life, the criminal justice system, prison, and things that she believed to be strange. *Id.* at 4297. When he rapped, he was angry, and it seemed that his frustration was coming out. *Id.* at 4297. He told her that prison was hard, and that he spent time in lockdown. *Id.* at 4290. He spoke with her about hearing voices. *Id.* at 4292. He told her that he was taking "crazy medications" while he was in prison, but he did not continue to take them after he was released. *Id.* at 4295.

Keisha saw Quawn twice after he was released from prison. PC24/4313. The first time was at her cousin's house. *Id.* at 4314. He told her that it was bad in prison. *Id*. at 4314. The second time she saw Quawn was at her aunt's house, where her family was having a party. *Id*. at 4314. He came by in a car with two other people. *Id.* at 4314-15. His hygiene was not good, and he smelled like someone who had not bathed in a couple of days. *Id.* at 4315. Keisha told him that he smelled and he laughed. *Id.* at 4315. That was the last time she saw Quawn. *Id.* at 4315.

Glenn Caddy, Ph.D.

Glenn Caddy, Ph.D. is an expert in clinical and forensic psychology. PC24/4354. He testified at Franklin's competency hearing on June 20, 2010. *Id.* at 4352. He met with Franklin at Union Correctional Institution on four separate days between October 2008 and December 2010. *Id.* at 4365-66. He reviewed documents contained in Defense Composite Exhibit Three, which was introduced at the competency hearing. *Id.* at 4354, PC10-19/1698-3699. He also reviewed Franklin's school records, which were introduced as Defense Exhibit Two (PC9/1649-86), a 1993 presentence investigation report from Pinellas County, which was introduced as Defense Exhibit Three (PC9/1687-97), and a 1993 predisposition report from Pinellas County, which was introduced as Defense

Exhibit Four (PC9/ 3700-11), as well as various other documents that are already on the record. PC24/4359-61. Dr. Caddy spoke with a mental health specialist at Union Correctional Institution and Antwanna Butler, Franklin's co-defendant in the case involving Mr. Horan. *Id.* at 4362-63. He was also present for the testimony of Franklin's family members who testified at the evidentiary hearing, and he consulted with Marjorie Hammock. *Id.* at 4364.

Although Franklin was resistant in terms of any testing, Dr. Caddy was able to establish enough of a relationship with him that he allowed Dr. Caddy to administer the Wechsler Adult Intelligence Scale, Revision III in October 2010. PC24/4366-69. Franklin achieved a performance IQ of 79, placing him in the eighth percentile; a verbal IQ of 83, placing him in the thirteenth percentile; and an overall IQ of 78, placing him in the seventh percentile of his age-appropriate population. *Id.* at 4369-70. Dr. Caddy felt that these scores were valid, and they were consistent with previous scores he achieved on the Beta IQ test while he was at the DOC. *Id.* at 4370-71. Dr. Caddy attributed the fact that his verbal scores were higher than his performance scores to the years Franklin has spent on death row reading the Bible. *Id.* at 4372.

Franklin's school records indicate that he had difficulties in school. He was labeled emotionally disturbed and emotionally handicapped, which indicates that

Franklin was significantly impaired, had major difficulties in academic learning, was possibly disruptive in the classroom, and had a "poor capacity to function in acquiring information in the classroom." PC24/4373. He had abnormally excessive absences. *Id.* at 4373. Franklin's grades were generally poor in his early years, and they got worse. *Id.* at 4373. There were a number of incompletes. *Id.* at 4373. His first grade teacher noted on his report card that his behavior was in need of improvement. *Id.* at 4380.

Antwanna Butler described Franklin as depressed, not very bright, and unable to connect. PC24/4375, 4406. Although Butler was only eighteen years old when she met Franklin in 2001 and he was quite a few years older than her, she inferred that it was obvious to her that she had a better intellect than Franklin, and she felt that she was substantially more mature than him. *Id.* at 4376, 4408.

Dr. Caddy concluded that Franklin has very low intellectual functioning, but he does not meet the criteria for mental retardation. PC24/4378. Although his IQ score is a few points above the 70 or below that would place him in the mild mental retardation range, he does not seem to have been able to function in the everyday world. *Id.* at 4377-78.

As a child, Franklin was removed from his mother, who was ill, and went to live with Minnie Thomas. PC24/4378. He thought of Mrs. Thomas and her

husband as his parents, and he identified them as people who loved him. *Id.* at 4378. In fact, on his first grade report card, his name was listed as "Quawn Thomas" as opposed to his legal name, "Quawn Franklin," which he began using again after he moved back to Pinellas County. *Id.* at 4379-80; PC9/1665.

Franklin did not want to leave Mrs. Thomas, and when his mother brought him back to St. Petersburg, his adjustment was extremely poor. PC24/4378, 4382. He felt betrayed because he was not able to stay with Mrs. Thomas anymore, and abandoned because she let him go. *Id.* at 4382. He was confused that Mrs. Thomas, whom he loved, let him go with a woman with whom he did not feel a connection. *Id.* at 4382. He felt angry and disconnected, and he had difficulty fitting in. *Id.* at 4381-82. He was willing to do anything he needed to do to get back to Mrs. Thomas, including stealing bikes, which resulted in Franklin spending time in juvenile detention. *Id.* at 4381, 4383.

Franklin's anger and difficulty fitting in led to problems with the other children. PC24/4382. He lost a front tooth in a bicycle accident. *Id.* at 4382. He was not one of the "in" kids. *Id.* at 4383. He became the brunt of people's jokes. *Id.* at 4383. He seemed to be a target for being mocked, which did nothing to advance his sense of personal self-confidence or sense of self, and caused him to self-isolate. *Id.* at 4382-83. Once he was in the juvenile detention center, he

started to feel like he had to protect himself because he was always being mistreated by the other children. *Id.* at 4382-83.

The difficulties Franklin experienced in his childhood were exacerbated by a significant hearing impairment, which he was born with. PC24/4383. In 1991, when Franklin was fourteen years old, he had surgery on his right ear, which improved his hearing in that ear to a normal level. *Id.* at 4385. One year later, shortly before he went to adult prison for the first time, he had a second surgery to repair his left ear. *Id.* at 4385-86. In a letter from Dr. David Hill to Dr. Loren Bartels dated January 8, 1991, Dr. Hill hinted at a link between Franklin's hearing impairment and his behavioral problems:

> This is the boy we discussed by telephone. There appears to be social problems. On the first visit he was brought in by his mother. On the second visit he was brought in in shackles and chains by the police department. I would think that any attempts at rehabilitation would include some means of improving his hearing.

Id. at 4386; PC10/1848.

Some of Franklin's difficulties may have been the result of his hearing impairment. His first grade teacher indicated on his report card that he needed to listen better in class, but it may have been the case that he was unable to hear as opposed to him choosing not to listen. PC24/4380, 4387. Limitations to Franklin's neural circuitry, a bilateral hearing deficit, and an unfortunate and disadvantaged early life

experience "led him to not be able to benefit from the limited educational process to which he was exposed." *Id.* at 4390. Additionally, hearing deficits that are not recognized and dealt with can lead to social isolation, not feeling good enough, not feeling normal, and not being able to fit in. *Id.* at 4387-88.

The limitations and challenges Franklin faced caused him to miss out on developing a sense of self:

> Dr. Caddy: In good emotional development we have emerging in childhood a sense about what we do that's good, what we do that's not so good, what we have the ability to do, you know, why we're loved, what it's all about to slowly feel more and more confident as you master the various talents along the road of maturity. Quawn missed out on that entire cycle and so he just – he just missed out.
>
> Counsel: What in Quawn's life made him miss out on developing this sense of self?
>
> Dr. Caddy: Limitations of intellect, limitations of hearing, limitations of social support and constancy, being uncomfortable about his relationships with his mother, being uncomfortable about being ripped from Minnie's life and love, not being able to fit in in school, being generally – I'm not sure I like the term, but sort of like a failure in terms of his ability to maintain consistency with other kids in his class, a tendency to be mocked.
>
> And then once he start[ed] getting into trouble, and the trouble was very adolescent, sort of stealing of bikes, stealing of stuff from stores, et cetera, et cetera, and not perceiving that somehow this was all that bad because it gave him things for brief moments that proved meaningful for him at the time. I mean, stealing a bike or stealing something from a store. There was not much this young gentleman had going for him. He does not appear to even have had meaningful

friendships, social friendships.
PC24/4401-02.

A rich fantasy life and the creation of different personas helped Franklin fill this void. *Id.* at 4399.

Franklin has a lengthy history of living in his own head and trying to find meaning in a variety of things. PC24/4391. When he was seven years old, he was playing in the dirt and he saw something that he perceived to be an angel. *Id.* at 4388-89. Additionally, as a child, he would get a ringing sensation in one of his ears, which may have been connected to his hearing deficits, that he thought meant that something was going to happen. *Id.* at 4389-90.

Franklin learned to construct fantasy and lies as a way of coping with periods of confinement and developing a sense of self. PC24/4391, 4394. By the age of fourteen, he was depressed, miserable, and did not feel good about himself. *Id.* at 4393-94. He was targeted and physically threatened by the other children in juvenile detention because he was not from that area. *Id.* at 4391-92. He did not have much of a sense of self, and he was neither bright nor adept at managing himself in an interpersonal environment. *Id.* at 4392, 4394. He spent an abnormal amount of time in solitary confinement, which did nothing to improve his social skills or his sense of worth. *Id.* at 4392. This time allowed him to develop

fantasies, in which he pretended that he was someone else. *Id.* at 4392-93. For a time, Franklin attempted to derive status by pretending he was a football player from another town. *Id.* at 4393. The more he pretended to be someone else, the more he got lost in his own fantasy and imagination. *Id.* at 4393.

Franklin's fantasies evolved to meet whatever his needs were at the time, and eventually became an essential element of who he was. PC24/4396, 4406. At times, his greatest need was protection. *Id.* at 4396. By age fifteen, he was in adult prison, where he was a target. *Id.* at 4391. He was very slender, and he was small compared to the adult males in prison. *Id.* at 4394. He reported abuse by other inmates as well as guards. *Id.* at 4394. He had never been to Chicago, and he did not even have the social facilities to be in a gang. *Id.* at 4396. Nevertheless, he tried to protect himself by pretending to be a gang member from Chicago. *Id.* at 4396. He sought out information that would make his story more believable, and he started to live the act. *Id.* at 4397. Although he knew deep down that he was not really a gang member from Chicago, it was better than being who he really was, and the role that he took on had self-preservative, as well as self-status, value. *Id.* at 4397.

At other times, Franklin struggled to find meaning and status in his existence. PC24/4397. He spent as much as two years of his prison sentence in

and out of solitary confinement, where he was isolated from the other prisoners. *Id.* at 4394-95. As Dr. Caddy explained, people in solitary confinement attempt to create meaning from having absolutely no positive communications from other people or positive access to information, and they start to live inside their own heads. *Id.* at 4395. In people who are very vulnerable, this can be dangerous in terms of the onset of psychotic-like process. *Id.* at 4395. By the time Franklin went to adult prison, he had been vulnerable for years, and his time in solitary confinement allowed him to further build his fantasy life. *Id.* at 4395-96. He filled some of his time by pretending that he was a rapper and learning to rap. *Id.* at 4398. His fantasy life took on darker and darker elements over time, and he went from calling himself "Cool Frank" to "Hellion" to "The Prince of Darkness." *Id.* at 4398. At some point, an image emerged of "Minigore," an evil image that came to visit him now and then. *Id.* at 4401. Minigore was an entity that Franklin was afraid of, but that he was also connected to in some way, and it is one of the earliest indications that his self-isolation was at risk of bringing forward a significant level of internal pathology. *Id.* at 4401-02. By age sixteen or so, he had evolved a self-construct that he was evil. *Id.* at 4398. By age seventeen, he was seeing and hearing things that were not there. *Id.* at 4402.

By the time Franklin was released from prison, a substantial amount of his

daily life was fantasy. PC24/4403. He continued to call himself The Prince of Darkness. *Id.* at 4399. He knew that he was crazy because people did not react normally to him. *Id.* at 4404. He felt like his life and his circumstances were largely outside of his control. *Id.* at 4403. Although he recognizes that he created delusions, he does not know how much of them were his own creation and how much of them were coming from within him in a way that he did not have control. *Id.* at 4404. It was as though he was acting out a role in a movie, while at the same time other forces, such as Minigore and Hellion, were playing a massive role in a lot of what he did. *Id.* at 4404. At the time of the crimes against Mr. Lawley, Mr. Horan, and Mrs. Johnson, he saw himself as either evil or possessed by evil, and these forces controlled his actions. *Id.* at 4405-06.

Dr. Caddy considered multiple sources regarding Franklin's state of mind around the time of the offense. Although Franklin was given a number of antipsychotic medications while he was in prison, he did not continue to take these medications after he was released. P24/4410-11. Antwanna Butler, whom he lived with for a little while after he was released from prison, reported that he drank a lot of beer and smoked marijuana. *Id.* at 4407. She described him as being impaired, even when he was not on drugs. *Id.* at 4475-76. He would space out and go off into his own world. *Id.* at 4475, 4409. He had problems with concentration and

attention, and he would jump from one topic to another. *Id.* at 4409. She could tell that he was dealing with a lot of issues within himself, and she thought that there was something wrong with him. *Id.* at 4376, 4408. Both Ms. Butler and some of the doctors who have examined Franklin in the past noted that he had a lot of mood swings, and he would go from being normal to being strange or flipping out in bouts of depression, which Dr. Caddy attributed to his lack of social facilitation and his lack of ability to cope with situations and emotions. *Id.* at 4407-08. Multiple sources reported that Franklin used rap music to express anger about the system and how he was treated in prison. *Id.* at 4409-10. Reports from family members that Franklin smelled bad and had poor hygiene, as well as a large number of disciplinary reports during his eight years in prison, may be indicators of mental illness. *Id.* at 4411; PC25/4437-38.

Dr. Caddy concluded that Franklin suffers from a delusional disorder, "a psychosis in which the individual takes on an irrational distorted belief system that becomes the essence of who he is." PC24/4412. Franklin's life has been almost devoid of meaning and self-definition, and these delusions have helped him frame, cope, and make sense of his world, and even define elements of self. PC25/4418. The delusion became so much of whom he was that it eventually led Franklin to experience hallucinatory phenomenon and an array of bizarre behaviors after his

arrest, such as licking the floor of his jail cell. PC24/4413; PC25/4440-41. At the time he was committing the crimes, he was largely emotionally disconnected from the "hideousness" of what had taken place. PC24/4413. Now that he recognizes what he did, the extreme religiosity that he is currently exhibiting on death row is yet another attempt at trying to cope with and make sense of his current situation. *Id.* at 4413; PC25/4417.

Marjorie Hammock, MSW

Marjorie Hammock, MSW is a licensed social worker with approximately fifty years of experience. PC25/4461-4465. She was hired by postconviction counsel in 2008 to perform a biopsychosocial assessment of Franklin. *Id.* at 4474. She reviewed Franklin's school records, 1993 presentencing investigation, and 1993 predisposition report. *Id.* at 4474-75. She reviewed records from the DOC, including his medical and mental health records, and medical records concerning Franklin's hearing deficits, hearing testing, and surgery that was done on his ears. *Id.* at 4474-75. She also spoke with Dr. Caddy and read his report. *Id.* at 4482. In addition to Franklin's family members who testified at the evidentiary hearing, Ms. Hammock spoke with Mrs. Thomas; Mrs. Thomas' son, daughter (Stephanie Brown), and stepdaughter; Franklin's paternal aunts, Lynette Franklin and Phynedra (Delise) Franklin; Franklin's paternal grandmother, Johnny White

Franklin; Franklin's cousin, Natasha Barfield; and Franklin's maternal aunt, Ida Owens Shorter Huggins. *Id.* at 4479-80.

In 2008 Ms. Hammock spent two full days with Franklin at Union Correctional Institution, during which time she obtained basic information about Franklin and spoke about his background. PC25/4476-78. However, the information she obtained was sketchy, as he was focused heavily on his religious activities, and he was concerned that he was not spending enough time reading the Bible and preparing himself for God's work. *Id.* at 4477-78.

Ms. Hammock identified several patterns in Franklin's life. He suffered from attachment issues that resulted from trauma based largely on separation. PC25/ 4484-85. There were emotional and behavioral problems in his early years, as well as early academic problems, which are evident in the school records. *Id.* at 4484. His coping skills, his ability to relate to others, and his capacity to follow directions and be involved in his own growth and development were challenged. *Id.* at 4484.

Ms. Hammock looked at these patterns in the major developmental time frames in Franklin's life. PC25/4484. She began with the prenatal period, including the circumstances around the health and welfare of Franklin's mother when she was carrying him and prior to that. *Id.* at 4484. Franklin's mother, Jean,

was only fifteen years old when she had her first child, Keisha. *Id.* at 4486. She experienced seizures after she had Keisha, and she may have been taking seizure medications while she was pregnant with Franklin, which can affect the child's development. *Id.* at 4485-86.

When Franklin was born, his father, Hillard, was in the military. PC25/ 4488. Hillard and Jean were never married. *Id.* at 4488. Hillard did not even know that Franklin existed in his early years, and even then he only found out about Franklin accidentally. *Id.* at 4487. Hillard was incarcerated at times, and he had little to no contact with his son, with the exception of one contact after Franklin was released from prison. *Id.* at 4487.

In his first few weeks Franklin's life, he was frail, underweight, and a poor feeder. PC25/4485. When Franklin was approximately six weeks old, Minnie Thomas, who was related to his maternal family by marriage, was visiting and she learned that there was a newborn that seemed not to be taken care of properly and whose mother was ill. *Id.* at 4488. She offered to take him, and she brought him home to live with her, although she never had legal custody of him. *Id.* at 4488. She took him to a doctor, and he had to be fed very carefully and very slowly to build up his weight and his ability to eat. *Id.* at 4485.

Franklin lived with Minnie Thomas, her husband, and their children until he

was eight years old. PC25/4489. He referred to Mr. and Mrs. Thomas as his father and mother. *Id.* at 4489. There is one place in Franklin's school records from Lake County where he was going by the last name "Thomas". *Id.* at 4493. According to Mrs. Thomas, up until the time he was taken away from her, Franklin did not know that Jean was his mother. *Id.* at 4495. According to Franklin, up until he was eight years old, his only family was Mrs. Thomas. *Id.* at 4495.

As a child growing up with Mr. and Mrs. Thomas, Franklin had behavioral problems, which Mrs. Thomas acknowledged may have been the result of his being spoiled. PC25/4490. He was allowed to do things that the other children could not do, and he was protected. *Id.* at 4489-90. The other children could not harm him even if he did something that would require some retaliation. *Id.* at 4490. He was somewhat fretful at times. *Id.* at 4490. He had difficulty sharing and following the rules of games. *Id.* at 4490. He also had serious issues about being left or abandoned. *Id.* at 4490. Mr. Thomas would punish Franklin when he misbehaved by not allowing him to ride with him in the truck when he was going someplace, and Franklin would react by having tantrums, stretching out kicking and screaming. *Id.* at 4490.

Franklin also had problems at school while he was living with the Thomases. PC25/4490-91. His school records indicate that he performed poorly in first and

second grade. *Id.* at 4491. He was identified as being emotionally handicapped, and he had an Individual Education Program (IEP), which is a document that is used to identify children who have special needs and details the kinds of educational experiences the child needs and ways in which they can measure progress and development to ensure that the program is meeting the student's needs. *Id.* at 4491-92. At one point he was not allowed to ride the school bus or go on school trips because they could not control his behavior. *Id.* at 4491.

When Franklin was eight years old, Jean arrived at Minnie's home with a police officer without any notice. PC25/4494. They indicated that Minnie did not have legal custody and that Jean had a right to take her son. *Id.* at 4494. Franklin was not allowed to take any of his belongings with him. *Id.* at 4495. He came back to St. Petersburg, where he lived with his mother and his brother. *Id.* at 4496. Mr. and Mrs. Thomas did not visit him in St. Petersburg after that day. *Id.* at 4495.

It was difficult for Franklin to adjust to life in St. Petersburg. PC25/4495. Things were different, and he related that is was shocking and surprising for him. *Id.* at 4496. He left behind his friends and all of his belongings. *Id.* at 4496. He had trouble fitting in. *Id.* at 4496. Although his mother was there, he did not have the same kind of relationship with her that he had with Mrs. Thomas. *Id.* at 4496. He formed a decent relationship with his sister, Keisha, but there was initially

conflict with his brother, Todd, who has been incarcerated multiple times and was in federal prison at the time of the evidentiary hearing. *Id.* at 4495-96.

Franklin was "on a mission" to get back to Mrs. Thomas because that is what he knew. PC25/4496. He tried to run away numerous times. *Id.* at 4497. He did whatever he had to do to obtain bicycles and money so that he could get back to Mrs. Thomas, which led to numerous arrests. *Id.* at 4497. He was picked up by the police on more than one occasion when he tried to run away, and once he spent the night in another community before he returned home. *Id.* at 4497.

Franklin also suffered from sensory deficits. PC25/4498. He had vision problems and was prescribed glasses. *Id.* at 4498. Family members indicated that they knew he had trouble with his hearing and they had to speak directly to him and raise their voices. *Id.* at 4498. His medical records revealed that his hearing was tested, and hearing loss was detected. *Id.* at 4498-99. His doctors recommended that he receive preferential treatment in school. *Id.* at 4499. Around the age of fifteen, he had surgery on one ear. *Id.* at 4498. Approximately one year later, he had a second surgery. *Id.* at 4498. Ms. Hammock described the impact that a hearing deficit that is not addressed can have on a child:

> Ms. Hammock: Well, we can't hear directions for one thing and it can lead to lots of troubles if you don't know how to follow what you're being told to do. And then there are misconceptions in terms of what

> you hear because it's distorted. It causes a lot of frustration. And there is some indication in the literature that some of the behavioral problems that you see have a lot to do with vision and/or sight loss.
>
> Counsel: And can a hearing impairment such as the one that Mr. Franklin suffered from affect a person's social development, their ability to form relationships?
>
> Ms. Hammock: Yes, it can. Again, missing clues, not understanding what people are saying to you, or nonverbally implying. And so again, the social relationship can be interrupted or not developed.

Id. at 4499-4500.

Franklin spent long periods of time in lockup during his young adulthood. PC25/4500. He went to adult prison for one year when he was fifteen years old, was released, and returned to prison, where he served eight years of a ten-year sentence. *Id.* at 4502. Franklin's mother passed away from a seizure while he was in prison. *Id.* at 4501-02. He was considered a behavioral problem in the correctional setting, and had disciplinary infractions, which may be a sign of mental illness. *Id.* at 4500-01. Franklin reported that he was treated poorly in prison, including physical abuse and guards withholding or tampering with his food, which would have negatively affected his ability to trust, be involved with other people, and think clearly. *Id.* at 4503. He spent time in solitary confinement, which hinders one's social development and can lead to other problems because of the lack of human interaction. *Id.* at 4506. He had numerous mental health calls,

received forced medications, and was given a number of diagnoses. *Id.* at 4502-03. He was released from prison without a release plan, and he was not directed toward other mental health facilities or services he could receive outside. *Id.* at 4503. He was released in Lake County, but he wanted to be in St. Petersburg, where he was trying to get his probation transferred. *Id.* at 4503-04.

Social workers look at risk factors and protective factors to determine what kinds of things will help or hinder a person with regard to development and performance. PC25/4505. Ms. Hammock identified the following risk factors in Franklin:

- Trauma of being separated from the only family that he knew in a fairly crucial period of time and the lack of resources that he needed after the transition was made. *Id.* at 4505.
- Lack of a significant father figure in his life after he left Mr. Thomas. *Id.* at 4508.
- Significant loss during his childhood and adolescence:
    - Separation from Mr. and Mrs. Thomas. *Id.* at 4507.
    - Separation from his family when he is involved in the juvenile justice system and again when he is incarcerated in adult prison. *Id.* at 4507.
    - Incarceration of his brother, Todd. *Id.* at 4507.
    - Death of his mother. *Id.* at 4507.
- Illness of Franklin's mother (if it limited her availability to him). *Id.* at 4508.
- IQ in the low range. *Id.* at 4505-06.
- Hearing deficits. *Id.* at 4506.
- Family history of mental illness. *Id.* at 4506.
- Periods of solitary confinement. *Id.* at 4506.
- Abuse suffered during incarceration. *Id.* at 4507.

Protective factors are elements that protect a person and allow them to develop and survive, even under difficult circumstances. PC25/4504. In contrast to the numerous risk factors Ms. Hammock was able to identify, the only protective factor she found was that Mrs. Thomas cared for him and the family environment with the Thomases had some supportive elements in it. *Id.* at 4508.

Ms. Hammock concluded the following about Franklin:

> That again he was a child who had very little resources developing, that he had significant challenges in terms of consistency and development in his life. There was some educational and cognitive learning deficits that show up early in his academic history. He was unable really at any point in early childhood and latency to develop appropriately and be able to meet his needs, to think consciously, to have good relationships with others, and to feel safe and protected in his environment.

PC25/4509.

It was difficult for Franklin to develop a sense of self, and he was not able to make good decisions. *Id.* at 4509.

Ineffective Assistance of Counsel

In *Strickland v. Washington*, the United States Supreme Court held that counsel has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversary testing process. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Specifically, counsel has a duty to investigate in order to make the

adversarial testing process work in the particular case. *Id.* at 690. "An ineffective assistance of counsel claim has two components: A petitioner must show that counsel's performance was deficient and that the deficiency prejudiced the defense. To establish deficient performance, a petitioner must demonstrate that counsel's representation 'fell below an objective standard of reasonableness.'" *Id.* at 687-688 (internal citations omitted). Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

In *Wiggins v. Smith*, the United States Supreme Court held that "*Strickland* does not establish that a cursory investigation automatically justifies a tactical decision with respect to sentencing strategy. Rather a reviewing court must consider the reasonableness of the investigation said to support that strategy." *Wiggins v. Smith*, 539 U.S. 510, 527 (2003). "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for

reasonableness . . .” *Id.* at 521 (*quoting Strickland*, 466 U.S. at 690-91). Counsel’s highest duty is the duty to investigate and prepare. Where counsel does not fulfill that duty, the defendant is denied a fair adversarial testing process and the proceedings’ results are rendered unreliable. No tactical motive can be ascribed to an attorney whose omissions are based on ignorance, *see Brewer v. Aiken*, 935 F.2d 850 (7th Cir. 1991), or on the failure to properly investigate or prepare. *See Kenley v. Armontrout*, 937 F.2d 1298 (8th Cir. 1991); *Kimmelman v. Morrison*, 477 U.S. 365 (1986). A reasonable strategic decision is based on informed judgment. “[T]he principal concern . . . is not whether counsel should have presented a mitigation case. Rather, [the] focus [should be] on whether the investigation supporting counsel’s decision not to introduce mitigating evidence . . . was itself reasonable.” *Wiggins*, 539 U.S. at 522-23. In making this assessment, the Court “must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.” *Id.* at 527.

Wiggins embodied the principles of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, which were established in 1989 and revised in February 2003. The Guidelines recognize a national standard for the performance of defense counsel in capital cases. The

2003 ABA Guidelines [hereinafter Guidelines] clearly establish under Guideline 10.7(A) that "[c]ounsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty." Guideline 10.7(A)(2) further provides that "[t]he investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented."

In *Rompilla v. Beard*, the United States Supreme Court held that counsel rendered deficient performance and cited counsel's failure to review Rompilla's prior conviction, failure to obtain school records, failure to obtain records of Rompilla's prior incarcerations, and failure to gather evidence of a history of substance abuse. *Rompilla v. Beard*, 545 U.S. 374, 382 (2005); *See also*, *Porter v. McCollum*, 130 S.Ct. 447, 452 (2009).

Franklin's attorneys were aware of the importance of presenting mitigation in this case. They did not believe there was any serious chance that Franklin would not be found guilty, and they believed that the best chance the defense had of helping him would have been in the penalty phase. PC25/4575. This awareness is further documented in an investigation request from Assistant Public Defender William Stone to Investigator J.T. Williams dated February 26, 2002:

Need to complete a penalty phase assessment, attached.

> (J.T., need for you to go to the jail on as many visits as you think necessary and appropriate, and lead this guy through the completion of the questionnaire. This needs to be as detailed and complete as possible as penalty phase will probably be our only real chance to do anything to help this guy.)

PC20/3778-79. Despite their realization of the importance of the penalty phase in Franklin's case, trial counsel's efforts as far as investigating mitigating evidence consisted mainly of asking their investigator to conduct a forensic assessment, deposing Minnie Thomas, and speaking with Franklin about providing testimony about the difficulties he encountered in juvenile detention. PC25/4542-43. Prevailing professional norms require counsel to conduct a thorough investigation of the defendant's background. *Porter*, 130 S.Ct. at 452. Franklin's trial counsel clearly did not satisfy these norms. They did not employ a mitigation expert in this case. PC25/4569. They failed to obtain a comprehensive social history, biological history or psychological history of Franklin. They did not obtain basic records regarding Franklin, and they failed to speak with his family members in St. Petersburg who would have been available to testify at trial. This deficient performance is highlighted by the fact that, with the exception of Franklin himself, defense counsel failed to present live testimony of even a single witness, either during guilt phase or penalty phase.

The circuit court found that "[t]rial counsel conducted an extensive

investigation into potential mitigation evidence," and that they obtained Franklin's school, medical, and DOC records. PC7/1204. The court further found that "[b]ased on their extensive investigation, trial counsel was well aware of Franklin's background and made the strategic decision to introduce such evidence from two sources: Minnie Thomas and Franklin himself." *Id.* at 1204. These findings are not supported by competent and substantial evidence, and therefore should not be given deference by this Court. *Sochor v. State,* 883 So. 2d at 772. In fact, trial counsel failed to obtain numerous records that would have been readily available or speak with any of Franklin's family members who testified at the evidentiary hearing, and they were not aware of several aspects of Franklin's background. As a result of trial counsel's incomplete and constitutionally inadequate investigation, they were not in a position to make an informed strategic decision about which witnesses or evidence to present. *Wiggins*, 539 U.S. at 521-22; *Sears v. Upton*, 130 S.Ct. 3259, 3265 (2010).

Franklin signed releases so that the Public Defender's Office could obtain institutional records. PC25/4570. His further cooperation was not needed to obtain these records, and counsel would not have been in the position to make a reasonable strategic decision about what mitigation to present without first reviewing them. However, Franklin's trial counsel failed to obtain records

regarding their client, which would have been readily accessible.

Counsel provided deficient performance by failing to obtain a predisposition report and a presentencing investigation report from 1993, which would have led to mitigation that could have been presented during penalty phase. Established norms require that counsel in capital cases make reasonable efforts to review the court files of the defendant's prior convictions. *See Rompilla*, 545 U.S. at 377; *Green v. State*, 975 So. 2d 1090, 1112 (Fla. 2008). In 1992, Franklin pled guilty to one count of grand theft in case number 92-16073 in Pinellas County. A presentence investigation report was issued on February 16, 1993 (PC9/1687-97) and a predisposition report was issued on January 5, 1993 (PC9/ 3700-11). Both reports were contained in Franklin's court file in Pinellas County case number 92-16073, and a circuit court judge ordered that they be sealed. PC9/1687; PC9/3700. Postconviction counsel obtained a court order in 2011 allowing CCRC to view and copy these reports, which were subsequently admitted at the postconviction evidentiary hearing. PC6/1051-52. Trial counsel could not recall seeing Franklin's 1993 presentence investigation report or predisposition report, and they could not recall making any efforts to obtain these reports. PC25/4537, 4574.

Counsel's deficient performance prejudiced Franklin because if they would have looked at the file of Franklin's previous conviction and the reports contained

therein, they would have found a range of mitigation leads that no other source had opened up. *See Rompilla*, 545 U.S. at 390. Some of this mitigation involved Franklin's family background. The presentence investigation report stated:

> Gloria Collins obtained custody of Quawn at age 7 because prior to that she was very ill and could not care for him. She further stated that she tried to get Quawn back at the age of 3 months however, legal guardian Minnie Thomas, would not return him to her. She forged Quawn's last name as Thomas leading him to believe he was her child.

PC9/1694.

The predisposition report indicated that Franklin's mother "was upset because Minnie Thomas had continually attempted to be involved in Quawn's life and had been a 'bad' influence on Quawn" and that she felt that "Minnie undermines her authority and encourages Quawn to run away." PC19/3701. It also indicated that there was no father figure in the home and that Franklin's brother, Todd, was serving time in adult prison. *Id.* at 3702.

The presentence investigation report also would have provided information about Franklin's hearing deficits. Under the section entitled "Physical and Mental Health," the report stated:

> Quawn Franklin was diagnosed as having a significant hearing disability. Franklin has had surgery performed on both his right and his left ear. Apparently the subject's hearing disorder has been ongoing for the past thirteen years. Dr. Loren Bartels, M.D. of the University of South Florida has conducted surgery on both of

Quawn's ears with attempts to enhance his hearing disability. PC9/1694.

Trial counsel was unaware of Franklin's hearing deficits, and they did not obtain HRS records or medical records regarding Franklin's hearing loss. PC25/4584, 4539. The presentence investigation report would have informed counsel about this issue, and it would have led to the discovery of additional documentation regarding Franklin's hearing deficits, such as the HRS and medical records that were introduced during his competency hearing. PC10/1843-67.

Trial counsel was also deficient in that they failed to obtain and present Franklin's school records. Mr. Grossenbacher did not think he ever saw any school records for Franklin. PC25/4537. Mr. Nacke thought that there were a couple of pages of records from Pinellas County in Franklin's file. *Id.* at 4571. He recalled seeing a letter from Mr. Stone, a supervising attorney at the Public Defender's Office, to the Lake County School board and a response saying that they did not have any of Franklin's records. *Id.* at 4571. None of Franklin's school records were introduced at trial. Franklin's school records from both Lake County and Pinellas County were obtained by CCRC, and a certified copy of these records was introduced at the evidentiary hearing. PC9/1649-86. Dr. Caddy and Marjorie Hammock relied on these records, which indicate that he was labeled

emotionally disturbed and emotionally handicapped, had excessive absences, behavioral problems, and poor grades. *Id.* Additionally, his name is listed as "Quawn Thomas" on his first grade report card. *Id.* at 1655.

Furthermore, this Court has held that trial counsel renders deficient performance when his investigation involves limited contact with a few family members and he fails to provide his experts with background information. *Sochor*, 883 So. 2d at 772. *See also, State v. Lewis*, 838 So. 2d 1102, 1113 (Fla. 2002) ("[T]he obligation to investigate and prepare for the penalty phase portion of a capital case cannot be overstated - this is an integral part of a capital case."); *Ragsdale v. State*, 798 So. 2d 713, 718-719 (Fla. 2001) (holding that inexperienced counsel rendered deficient performance when his entire investigation consisted of a few calls made to family members); *Rose v. State*, 675 So. 2d 567, 571 (Fla. 1996) ("An attorney has a duty to conduct a reasonable investigation, including an investigation of the defendant's background, for possible mitigation evidence." (quoting *Porter v. Singletary*, 14 F. 3d 554, 557 (11th Cir. 1994)); *State v. Lara*, 581 So. 2d 1288, 1289 (Fla. 1991) (finding prejudice where counsel failed to present evidence of defendant's abusive childhood, notwithstanding the State's argument on appeal that it was defendant and his family who prevented defense counsel from developing and presenting mitigating evidence).

In the case at hand, trial counsel provided deficient performance when they failed to speak with even a single member of Franklin's biological family. According to trial counsel, Franklin made it clear that he did not want them to have any contact with his family in St. Petersburg. PC25/4541-42. They were concerned that if they did not abide by his wishes not to speak with his family in St. Petersburg, Franklin might decide not to attend his trial, and they did not make any efforts to learn about his family in St. Petersburg. *Id*. at 4543, 4549. However, Franklin provided the names of Lenny Franklin, Todd Franklin, Maurice Franklin, and Keisha Washington to investigator J.T. Williams during the initial forensic assessment. *Id.* at 4542; PC20/3780-81. He also provided the names and some contact information for four family members in St. Petersburg (Lynette Franklin, Hillary Franklin, Keisha Washington, and Maurice Franklin), as well as his brother, Todd Franklin, at a meeting with Assistant Public Defender William Stone at the Lake County Jail. PC20/3774; PC25/4598-99. Williams spoke with Minnie Thomas, who provided some additional names of family members. *Id.* at 4629. He made some attempt to contact these individuals, although it appears to have been limited to a few telephone calls and it did not produce any results. He was unsuccessful in locating Franklin's brother, Todd, in the prison or jail system in Hernando County. *Id.* at 4628-29. He attempted to track down some of

Franklin's family members from St. Petersburg, but he "kept coming up with dead ends on things." *Id.* at 4629-30. He left some messages and nobody called him back. *Id.* at 4633-34. Williams did not ever travel to St. Petersburg where these witnesses were living. *Id.* at 4634. All of the family members who testified at the evidentiary hearing were living in St. Petersburg at the time, and they would have been willing to testify at Franklin's trial. None of these individuals recalled being contacted by Franklin's attorneys prior to trial.

Due process requires competent mental health assistance to ensure fundamental fairness and reliability in the adversarial process. *Mason v. State*, 489 So.2d 734 (Fla.1986); *Sireci v. State*, 536 So.2d 231 (Fla. 1988); *Ake v. Oklahoma*, 470 U.S. 68 (1985). Meaningful assistance of counsel in capital cases requires counsel pursue and investigate all reasonably available mitigating evidence, including brain damage and mental illness. *Frazier v. Huffman*, 343 F.3d 780 (6th Cir. 2003). Counsel renders deficient performance when he fails to ensure an adequate and meaningful mental health examination. *Ponticelli v. State*, 941 So.2d 1073, 1095 (Fla. 2006); *Sochor*, 833 So.2d at 722. Prejudice is established when counsel fails to investigate and present evidence of brain damage and mental illness. *Ragsdale*, 798 So.2d at 718-19; *Rose*, 675 So.2d at 571 (*citing Porter v. Singletary*, 14 F.3d 554, 557 (11th Cir. 1994)).

Trial counsel provided deficient performance when they failed to obtain a comprehensive psychological and psychiatric evaluation and they did not present an expert witness who could have provided the jury and the trial court with an understanding of the social and psychological factors that impacted Franklin's life and contributed to the criminal episodes for which Franklin was convicted. It should have been apparent to counsel that Franklin suffered from mental issues of some sort. Trial counsel was aware that he had been treated for mental illness in the DOC. PC25/4538. He indicated in the forensic assessment completed by Williams that he suffers from nightmares and boughts of depression, "sometimes hears things that are not present," has "obsessive thoughts," and "acts on things without thinking them through." PC20/3795, 3809-10. He also told Williams that "his mental health was bad and he thought he was evil," and that "he felt darkness and evil to the point he felt he was full of evil and darkness." *Id.* at 3797, 3810.

Dr. Mason completed a neuropsychological screening of Franklin, and he recommended in his report that "Mr. Franklin undergo a comprehensive psychological and psychiatric evaluation to aid in differential diagnoses and medical and legal disposition." PC25/4420; PC10/1743. Dr. Mason's recommendation was never followed up, and neither a comprehensive neuropsychological examination nor a complex screening of Franklin was ever

done. PC25/4420. This failure occurred despite the finding of Dr. Mason from his pretrial evaluation of Franklin that Franklin suffers from bipolar I disorder, dysthymic disorder, and schizophrenia undifferentiated type. PC10/1743.

In addition to retaining Dr. Mason, trial counsel hired Dr. McMahon to evaluate Franklin for a potential insanity defense, competency, and possible mental health mitigation. PC25/4573. However, Dr. McMahon did not discuss mental health mitigation in her report. *Id.* at 4573. She testified at the evidentiary hearing that she did not believe Franklin was malingering, and she was of the opinion that he was pretty up-front. *Id.* at 4610. She met with Franklin twice and administered testing. *Id.* at 4606-08. He spoke about hearing voices that he recognized as his own thoughts, and about the Prince of Darkness. *Id.* at 4609-11. She concluded that his IQ was in the borderline range. *Id.* at 4611. She did not have enough information to conclude whether or not Franklin meets the diagnostic criteria for antisocial personality disorder. *Id.* at 4615. Scale eight on the MMPI, which is called "schizophrenic but bizarre thoughts," was elevated. *Id.* at 4615.

Trial counsel felt that any mental mitigation that the experts they hired would have been able to provide was outweighed by the bad things they had to say about Franklin. PC25/4553. However, having not obtained all of the available records regarding Franklin, and having not followed up on Dr. Mason's

recommendation, trial counsels' decision not to present mental health mitigation was not supported by a reasonable investigation and, therefore, it did not reflect reasonable judgment. *Wiggins*, 539 U.S. at 522-23; *Porter*, 130 S.Ct. at 453.

In the order denying relief on this claim, the circuit court recounted the aggravating factors that were found at trial and concluded, without any analysis of the mitigation that was presented either during trial or during the evidentiary hearing, that "there is no reasonable probability of a different result had trial counsel performed as alleged by Franklin." PC7/1204-05. In fact, there is no mention anywhere in the court's order of the additional mitigation that was presented in postconviction. The circuit court's finding that Franklin was not prejudiced by trial counsel's failure to conduct a thorough mitigation investigation is unreasonable because the court failed to consider the mitigation evidence adduced in the postconviction hearing. *See Porter*, 130 S.Ct. at 454-55 (holding that a state court unreasonable applies the prejudice prong of *Strickland* when it does "not consider or unreasonably discount[s] the mitigation evidence adduced in the postconviction hearing"). Furthermore, the court failed to reweigh the mitigation presented at trial and during postconviction against the aggravating circumstances found at trial. *See Porter*, 130 S.Ct. at 453-54 (holding that in order to assess whether there is a reasonable probability that the defendant would have

received a different sentence, the court must consider the totality of the available mitigation and reweigh it against the evidence in aggravation).

Defense counsel's failure to adequately investigate and present mitigation during penalty phase, much of which was readily available, prejudiced Franklin in that neither the trial court nor the jury was provided with the evidence that is necessary to make the life or death decision that is inherent in a capital sentencing. "Accurate sentencing information is an indispensable prerequisite to a reasoned determination of whether a defendant shall live or die [made] by a jury of people who may have never made a sentencing decision." *Gregg v. Georgia*, 428 U.S. 153, 190 (1976) (plurality opinion). It is well-settled that evidence of family background and personal history, such as the evidence presented at Franklin's evidentiary hearing, may be considered as mitigation. *See, e.g., Stevens v. State*, 552 So. 2d 1082, 1086 (Fla. 1989). Likewise, low intelligence[4] and evidence of mental illness[5] constitute valid mitigation. Had counsel conducted a reasonable investigation into potential background mitigation and obtained records, testimonial and documentary evidence would have established and proven the aforementioned unrebutted mitigation that was introduced during the

[4] *See, e.g., Williams v. State*, 987 So. 2d 1, 11 (Fla. 2008); *Henyard v. State*, 689 So. 2d 239, 244 (Fla. 1997).
[5] *Ragsdale* , 798 So.2d at 718-19; *Porter* , 130 S.Ct. 447; *Sears*, 130 S.Ct. at 3267.

postconviction evidentiary hearing, including trauma and loss during his childhood and adolescence, the lack of a father figure, the illness of his mother, hearing deficits, being identified as emotionally disturbed and emotionally handicapped in his school records, low intellectual functioning, lack of a sense of self, and the development of a delusional disorder that eventually led to hallucinations and a series of bizarre behaviors after his arrest. The mitigation offered in postconviction, when added to the minimal mitigation that was presented at trial, would likely have altered the jury's appraisal of Franklin's culpability. The likelihood of a different result is sufficient to undermine confidence in the outcome of the case. Therefore, Franklin is entitled to a new penalty phase trial.

ARGUMENT III

THE CIRCUIT COURT ERRED IN DENYING FRANKLIN'S CLAIM THAT COUNSEL PROVIDED PREJUDICIAL INEFFECTIVE ASSISTANCE BY FAILING TO CALL DR. MASON AS A WITNESS DURING THE PENALTY PHASE OF HIS CAPITAL TRIAL.

Franklin alleged in Claim II of his amended motion for postconviction relief that trial counsel provided prejudicial ineffective assistance by failing to call Dr. Mason as a witness during the penalty phase. PC5/801-03. The circuit court conducted an evidentiary hearing on this claim, and found as follows:

> Had counsel presented Dr. Mason at the penalty phase, the jury would have heard that Franklin has an antisocial personality disorder and lacked a conscience, which would have negated Franklin's personal

> expression of remorse. The jury would have also heard that Franklin malingered, or faked, the significance of mental conditions. Certainly, trial counsel made a sounds strategic decision in not presenting this evidence to the jury; based upon the foregoing Claim II is denied.

PC7/1205-06. Franklin seeks review of these findings.

An ineffective assistance of counsel claim can be based upon defense counsel's failure to investigate or present mitigation evidence. *Jackson v. Herring*, 42 F.3d 1350 (11th Cir. 1995); *Blanco v. Singletary*, 943 F.2d 1477 (11th Cir. 1991). In *Blanco v. Singletary*, the Eleventh Circuit granted habeas relief on Blanco's claim that his trial counsel rendered ineffective assistance, in part, by not presenting available mitigating evidence during penalty phase. 943 F.2d 1477 (11th Cir. 1991); *See also, Williams*, 987 So. 2d 1 (holding that counsel provided prejudicial ineffective assistance for failing to present the mitigating evidence contained in a mental health expert's report).

Franklin's attorney filed a Notice of Intent to Present Expert Testimony of Mental Mitigation on April 2, 2006. R4/623-24. The Notice stated that Franklin intended to present "expert testimony in mental mitigation in the event he is found guilty of first degree murder by the jury . . . through the testimony of Douglas J. Mason, Psy.D., LCSW." The Notice listed the following mitigators that the defense intended to establish through Dr. Mason's testimony:

1. The Defendant has a severe mental disturbance.
2. The Defendant has deficits in attention, speed of mental processing, judgment, planning, cognitive flexibility and inhibitory control.
3. The Defendant is impaired in his processing of sensory information.
4. The Defendant exhibits symptoms consistent with deficits in the brain that result in impulsive behaviors, limited judgment and difficulty with behavioral regulation.
5. The Defendant has limited ego strength and bizarre mentation.
6. The Defendant is suffering from a psychotic process.
7. Defendant has bipolar I disorder, severe without psychotic features; dysthymic disorder, schizophrenia undifferentiated type; and antisocial personality disorder.

R4/623-24.

Dr. Mason's report was introduced at the competency hearing, and it indicates that Dr. Mason would have been prepared to testify about each of the mitigators that the defense listed in its Notice of Intent to Present Expert Testimony of Mental Mitigation. PC10/1739-43.

Franklin was subsequently found guilty of first degree murder, and the penalty phase trial took place on April 26, 2004. Despite the intention expressed in the Notice described above, the defense did not offer the testimony of Dr. Mason or any other expert to establish mental mitigation. Franklin was prejudiced as a result, as the trial court did not find any of the mitigators listed in defense counsel's Notice of Intent to Present Expert Testimony of Mental Mitigation.

Trial counsel provided deficient performance when they failed to call Dr.

Mason as a witness. Franklin's attorneys testified that they did not call Dr. Mason because he diagnosed Franklin with antisocial personality disorder, and they thought that calling him would be worse for Franklin than not calling him. PC25/4552-53. Nevertheless, counsel actually listed antisocial personality disorder in their Notice of Intent to Present Expert Testimony of Mental Mitigation as one of the mitigating factors they intended to present through Dr. Mason's testimony, and at the time the notice was filed the defense intended to present that diagnosis as mitigating evidence. R4/623-24; PC25/4579. The circuit court concluded that trial counsel made a strategic decision not to present Dr. Mason at the penalty phase because they did not want the jury to hear that Franklin has antisocial personality disorder and that he malingered the significance of his mental conditions. PC7/1205-06. However, counsel did not attempt to deal with this diagnosis or with Franklin's apparent history of malingering, and instead decided unreasonably to forego mental health mitigation at trial without conducting a constitutionally adequate mitigation investigation. Trial counsel did not recall any discussions about presenting mental health mitigation to the judge at the *Spencer* hearing as opposed to presenting this evidence to the jury. *Id.* at 4561, 4582.

Franklin demonstrated in postconviction how the diagnosis of antisocial personality disorder could have been worked into an effective theory of mitigation.

Dr. Caddy agreed that Franklin suffers from antisocial personality disorder, but he explained that a person does not choose to have this disorder. PC25/4453. Dr. Caddy described how difficulties in his childhood contributed to Franklin developing a conduct disorder, and a lack of intervention, as well as a prolonged imprisonment, allowed this to develop into antisocial personality disorder. *Id.* at 4453-55.

As Mr. Grossenbacher testified, in his experience as an assistant public defender, individuals who are charged with violent crimes are very frequently diagnosed with antisocial personality disorder. PC25/4561-62. A diagnosis of antisocial personality does not give an automatic pass to the trial attorney to discontinue the penalty phase investigation and forego the presentation of mental health mitigation. If trial counsel declined to present mental mitigation in any capital case in which the defendant was diagnosed with antisocial personality disorder, the practice of mental health experts testifying in capital trials would become a rarity.

ARGUMENT IV
THE CIRCUIT COURT ERRED IN SUMMARILY DENYING CLAIMS III AND IV OF FRANKLIN'S MOTION FOR POSTCONVICTION RELIEF.

A court can deny a claim without an evidentiary hearing "where 'the motion, files, and records in the case conclusively show that the movant is entitled to no

relief.'" *Mungin v. State*, 932 So.2d 986, 995 (Fla. 2006). Moreover, "[f]or all death case postconviction motions filed after October 1, 2001, Florida Rule of Criminal Procedure 3.851 requires an evidentiary hearing 'on claims listed by the defendant as requiring a factual determination.'" *Mungin*, 932 So.2d at 995, n.8 *quoting* Fla. R.Crim. P. 3.851(f)(5)(A)(i).

To uphold the postconviction court's summary denial of claims raised in a motion pursuant to Fla. R.Crim. P. 3.851, a reviewing court looks at whether the claims are either facially invalid or conclusively refuted by the record. *See McLin v. State*, 827 So.2d 948, 954 (Fla. 2002). In postconviction proceedings, a defendant has the burden of establishing a legally sufficient claim. *See Id.* at 996. If the court determines that the claim is legally sufficient, the court "must [then] determine whether the claim is refuted by the record." *See Id.* at 996. The postconviction court must also support its summary denial by either stating the rationale or by attaching to its order of denial specific parts of the record that refute each claim presented in the motion. *See Id.* at 995-996. It should be noted that "[t]he need for an evidentiary hearing presupposes that there are issues of fact which cannot be conclusively resolved by the record." *Holland v. State*, 503 So.2d 1250, 1252-1253 (Fla. 1987).

When a postconviction court summarily denies relief without conducting an

evidentiary hearing, this Court must accept the defendant's "factual allegations as true to the extent they are not refuted by the record." *Rose v. State*, 774 So.2d 629, 632 (Fla. 2000) *receded from on other grounds by Guzman v. State*, 868 So.2d 498 (Fla. 2003); *see also Mungin*, 932 So.2d at 996. Moreover, "[w]hen a determination has been made that a defendant is entitled to an evidentiary hearing (as in this case), denial of that right would constitute denial of all due process and could never be deemed harmless." *Holland*, 503 So.2d at 1253. Factual allegations as to the merits of a constitutional claim as well as to issues of diligence must be accepted as true and an evidentiary hearing is warranted when the claims involve "disputed issues of fact." *Maharaj v. State*¸ 684 So.2d 726, 728 (Fla. 1996).

Franklin argued in Claim III his motion for postconviction relief that he is entitled to relief under *United States v. Cronic*, 466 U.S. 648 (1984), because the failures of Franklin's counsel during jury selection rendered him functionally devoid of counsel during a critical stage of trial and denied him an adversarial testing of the State's case. PC5/803-07. He requested an evidentiary hearing on this claim. *Id.* at 829. The claim read as follows:

> Mr. Franklin's trial counsel rendered deficient performance by failing to effectively conduct voir dire and to challenge the state's improper jury selection. In *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984), the Supreme Court created an exception to the *Strickland* standard for ineffective assistance of

counsel, and acknowledged that certain circumstances are so egregiously prejudicial that ineffective assistance of counsel will be presumed. *See Fennie v. State*, 855 So.2d 597, 602 (Fla. 2003); *Stano v. Dugger*, 921 F.2d 1125, 1152 (11th Cir. 1991). These circumstances include those where counsel is not present at a critical stage in the proceeding, or where counsel entirely fails to subject the State's case to a meaningful adversarial testing. *Id.*, *citing Bell v. Cone,* 535 U.S. 685, 695-96, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002). In the case at hand, the failures of Mr. Franklin's counsel during jury selection rendered Mr. Franklin functionally devoid of counsel during a critical stage of trial and denied Mr. Franklin an adversarial testing of the State's case.

Guideline 10.10.2, Voir Dire and Jury Selection, provides:

> A. Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case (particularly those relating to bias on the basis of race or gender), whether any procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Such challenges may include challenges to the selection of the grand jury and the grand jury forepersons as well as to the selection of the petit jury venire.
>
> B. Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding "death qualification" concerning any potential juror's beliefs about the death penalty. Counsel should be familiar with techniques: (1) for exposing those prospective jurors who would automatically impose the death penalty following a murder conviction or finding that the defendant is death-eligible, regardless of the individual circumstances of the case; (2) for uncovering those prospective jurors who are unable to give meaningful consideration to

mitigation evidence; and (3) for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.

C. Counsel should consider seeking expert assistance in the jury selection process.

In conducting individual voir dire in this case, counsel for Mr. Franklin limited their inquiry almost exclusively to general questions concerning the potential jurors' attitudes toward the death penalty. ROA Vol. VIII at 412-36. Counsel did not attempt to rehabilitate potential jurors whose initial indications that they were opposed to the death penalty made them possibly excludable. Trial counsel, in general and individual voir dire, did not inquire with potential jurors about the theory of defense, challenge boiler plate answers, prepare potential jurors for mitigation testimony, or prepare the jurors for certain evidence, such as gruesome photographs, which could affect their decisions.

Furthermore, Mr. Franklin's attorneys provided prejudicial ineffective assistance by failing to inquire in voir dire about the issue of racial bias. In *Turner v. Murray*, Turner, a black man, was sentenced to death for killing a white jeweler. *Turner v. Murray*, 476 U.S. 28, 106 S.Ct. 1683 (1986). The Court held that, "because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." *Id.* at 35. Thus, "a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias." *Id*. at 36.

In the case at hand, there is even more of a compelling case for defense counsel to have questioned the jury panel about the issue of racial bias than there was in *Turner*. Mr. Franklin, a black man, was on trial for the murder of Mr. Lawley, a white man. Mr. Horan, the victim of a previous murder of which Mr. Franklin was convicted and that the State used to prove an aggravating circumstance, was also

white. Despite the interracial nature of these crimes, however, neither defense counsel, nor the State, nor the trial court asked a single question about racial bias during voir dire. Furthermore, the jury panel was not informed of Mr. Lawley's race during voir dire. "Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." *Turner*, 476 U.S. at 35. By failing to inquire about racial bias, Mr. Franklin's counsel failed to adequately protect their client's constitutional right to an impartial jury. *See Id.* at 36.

Additionally, as Claim IV discusses in greater detail, Mr. Franklin received a great deal of media attention regarding the three crimes he was accused of committing in Lake County in December 2001. In fact, on March 8, 2004, The Honorable Mark J. Hill sent letters to prospective jurors in Mr. Franklin's case, which read in pertinent part:

> We anticipate a substantial amount of pre-trial publicity about the case, and therefore request that you not listen to or read any of the media reports about the case before you report for jury selection. You will be asked whether you complied with this request when you come to court.

See Appendix F. During voir dire, the Court questioned jurors about their knowledge of the Jerry Lawley case. R. Vol. VI at 160-225. However, neither the court, nor the State, nor defense counsel questioned jurors about their general media exposure during the relevant time period, including what newspapers they read and what television news programs they watch. Therefore, because the potential jurors were only questioned specifically regarding their knowledge of the Jerry Lawley case, it is probable, given the extent of the media exposure in these cases, that many of the jurors were exposed to media reports concerning the Alice Johnson case and the John Horan case, but they did not bring this to the attention of the Court because they were never asked about it.

Trial counsel rendered deficient performance in failing to competently

> conduct voir dire. Counsel has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversary testing process. *Strickland*, 466 U.S. at 688. Trial counsel's failure to competently conduct voir dire prejudiced Mr. Franklin in that jurors were not properly screened or prepared for the defense case in mitigation and jurors were improperly stricken from the panel, denying Mr. Franklin his right to a fair and impartial jury. Trial counsel's performance was so prejudicial as to have rendered Mr. Franklin functionally devoid of counsel during a critical stage of trial and deprived Mr. Franklin of a meaningful adversarial testing of the State's case. As such, under *Cronic*, prejudice can be presumed from trial counsel's deficient performance.

PC5/803-07.

Franklin alleged in Claim IV of his motion for postconviction relief that trial counsel rendered deficient performance by failing to file a motion for change of venue. PC5/807-13. Franklin requested an evidentiary hearing on this claim. *Id.* at 829. The claim read as follows:

> Under Fla. R. Crim. P. 3.240 (a), "[t]he state or the defendant may move for a change of venue on the ground that a fair and impartial trial cannot be had in the county where the case is pending for any reason other than the interest and prejudice of the trial judge." Unless good cause is shown for not filing a motion for change of venue within the time periods provided by the statute, Fla. R. Crim. P. 3.240 (c) provides that a motion must be filed at least ten days prior to trial. Where a petitioner claims that counsel provided ineffective assistance by failing to move for a change of venue, a court can examine counsel's performance under *Strickland*. *See State v. Knight*, 866 So. 2d 1195, 1209 (Fla. 2003). First, the petitioner must demonstrate that counsel's performance was deficient. *Strickland*, 466 U.S. at 687-88. The Commentary to Guideline 10.7 recognizes the potential importance of moving for a change of venue where it states that "[c]ounsel should maintain copies of media reports about the case for

various purposes, including to support a motion for change of venue . . ."

Mr. Franklin was accused of committing three violent crimes in Lake County, Florida in the span of two weeks. On October 15, 2002, in the midst of a jury trial, Mr. Franklin pled guilty to the December 28, 2001 burglary, robbery with a deadly weapon, and attempted felony murder of Alice Johnson. On August 11, 2003, Mr. Franklin pled guilty to the December 18, 2001 first degree murder, armed robbery, and kidnapping of John Horan, a pizza delivery man. In the case at hand, Mr. Franklin was tried for the December 29, 2001 attempted armed robbery and first degree murder of Jerry Lawley in Lake County, Florida. ROA Vol. I at 8-9. Jury selection began on April 19, 2004. ROA Vol. VI at 105.

Given the unique circumstances of Mr. Franklin's case, including his thirteen year old accomplice, his unusual name, and his prior convictions for two unrelated violent crimes that occurred within weeks of the murder of Jerry Lawley, defense counsel provided deficient performance by failing to file a motion for change of venue. Assistant State Attorney William Gross expressed to the media prior to voir dire that he expected that most people from Lake County would have heard about the case. Sherri M. Owens, *Case's High Profile Limits Jurors*, ORLANDO SENTINEL, April 20, 2004, at G1. It is also evident from a memorandum in defense counsel's file regarding a January 17, 2002 jail visit with Mr. Franklin[6] that defense counsel was well aware of the notoriety and intense media coverage of Mr. Franklin's case very early on in their representation of him. *See* Appendix E. Despite the notoriety of Mr. Franklin's case, a review of defense counsel's file on Mr. Franklin indicates that defense counsel did not keep copies of all media reports in Mr. Franklin's cases. Furthermore, there is no indication in defense counsel's file that counsel considered filing a motion for change of venue, or that

[6] Defense counsel wrote, "Told him that jurors are reading the paper and his statements that I was going to kill the police officers will affect their opinions of him."

counsel discussed with Mr. Franklin the possibility of filing such a motion.

In addition to showing that counsel's performance was deficient, in order to establish a claim of ineffective assistance of counsel for failing for move for a change of venue, a petitioner must satisfy the prejudice prong of *Strickland* and "bring forth evidence demonstrating that there is a reasonable probability that the trial court would have, or at least should have, granted a motion for change of venue if [defense] counsel had presented such a motion to the court." *Meeks v. Moore*, 216 F.3d 951, 961 (11th Cir. 2000). In order to establish that he is entitled to a change of venue, a defendant must demonstrate either "actual prejudice" or "presumed prejudice." *Meeks*, 216 F.3d at 960. A finding of actual prejudice requires the showing of two prerequisites. First, a defendant must show that "one or more jurors who decided the case entertained an opinion, before hearing the evidence adduced at trial, that the defendant was guilty." *Coleman v. Zant*, 708 F.2d 541, 544 (11th Cir. 1983); *See also Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed. 2d 751 (1960). Additionally, the court must determine that the jurors in question "could not have laid aside these preformed opinions and rendered a verdict based on the evidence presented in court." *Zant*, 708 F.2d at 544.

Although the Court questioned the jury panel regarding their knowledge of the Jerry Lawley case, neither the Court nor the attorneys specifically inquired about whether the jurors had prior knowledge of the Alice Johnson case or the John Horan case. Furthermore, even after Mr. Franklin was found guilty in the instant case, the trial court did not conduct further voir dire between the guilt phase trial and the penalty phase trial regarding the jury's knowledge of Mr. Franklin's prior convictions. Although the jurors who were eventually seated did not indicate that they had any prior knowledge of the case involving Jerry Lawley, it is not clear whether they had any knowledge of Mr. Franklin's previous cases, or whether any of the jurors entertained an opinion before hearing the evidence at trial that Mr. Franklin was guilty in the instant case. Therefore, it is unclear in the instant case whether there was actual prejudice.

If a defendant cannot show actual prejudice, he may be able to demonstrate that he is entitled to a change of venue by establishing that there is presumed prejudice. According to the Eleventh Circuit Court of Appeals, "[p]rejudice is presumed from pretrial publicity when pretrial publicity is sufficiently prejudicial and inflammatory and the prejudicial pretrial publicity saturated the community where the trials were held." *Coleman v. Kemp*, 778 F.2d 1487, 1489 (11th Cir. 1985); *see also Manning v. State*, 378 So. 2d 274, 276 (Fla. 1979) (holding that "[A] determination must be made as to whether the general state of mind of the inhabitants of a community is so infected by knowledge of the incident and accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds and try the case solely on the evidence presented in the courtroom."); *Rideau v. Louisiana*, 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963) (finding presumed prejudice where the defendant's twenty minute videotaped confession was broadcast three times to tens of thousands of people).

In the case at hand, because Mr. Franklin is not alleging that actual prejudice resulted from defense counsel's failure to move for a change of venue, he must demonstrate that there is presumed prejudice. Lake County, Florida, the community where Mr. Franklin's trial was eventually held, was saturated with prejudicial and inflammatory pretrial media attention about Mr. Franklin and the three cases in which he was charged. Numerous articles appeared in the Orlando Sentinel regarding Mr. Franklin in the nearly two and a half years from the date of the crimes against Mr. Lawley, Mr. Horan, and Ms. Johnson, and the trial in the instant case. Many of these articles contained extremely prejudicial information, which was not presented to the jury at trial. For example, on April 1, 2004, an article appeared in the Orlando Sentinel, which detailed a pretrial hearing in which Mr. Franklin expressed concerns about his mental state:

> . . . About 40 minutes into the hearing, he leaned over and whispered to one of his lawyers.

> "He said he needs psychological help," Assistant Public Defender Mark Nacke told the judge. "He said he's not feeling well. His medication needs to be adjusted. He said he is not getting the psychological help that he needs."
>
> . . . Nacke said Franklin, who has a tattoo on his neck that reads, "insane," told him that he did not understand what was happening and that he did not want to be there. He sat through much of the hearing with his head hung or his hands over his face.
>
> Circuit Judge Mark Hill said medical experts tested Franklin and found he was mentally competent to stand trial. In fact, Hill said, the tests showed Franklin may have been attempting to skew the test results.

Sherri M. Owens, *Killer Says He Needs Mental Help in Jail*, ORLANDO SENTINEL, April 1, 2004, at H1.

Another article, which reported on Mr. Franklin's guilty plea in the case involving John Horan, quoted an interview with Mr. Franklin, in which he told reporters:

> . . . [H]e opted against a trial for John Horan's murder so he could "get it over with" and because "if I tried, I would have gotten death." But prosecutors said Franklin still faces the death penalty in a second murder case, a possibility that didn't appear to faze the former Leesburg resident.
>
> "The only person I answer to is God," said an unshaven Franklin, who spoke slowly as he sat handcuffed behind a table at the Lake County Jail. "Whatever happens, it don't matter. I'll just pray to accept it."
>
> . . . In October, Franklin received three concurrent life sentences for nearly killing an elderly woman with his

> fists and stealing her car during the crime spree. And on Monday, Franklin pleaded guilty to robbing, kidnapping and shooting Horan. He now faces life in prison without parole and whatever sentence is handed down if he is convicted in the third trial.
>
> "If I could plea out, I would. But they're going to seek the death penalty," Franklin said. "The state attorneys think I have no heart. I made a mistake."

Mark K. Matthews and Jim Buynak, *Killer Says He's Guilty in Leesburg Slaying During Pizza Delivery*, ORLANDO SENTINEL, August 12, 2003, at B1.

Other articles offered speculation regarding Mr. Franklin's state of mind. For example, Mr. Franklin's sister-in-law told the press that "her brother became worse in prison and . . . blamed white people for his imprisonment." Bill Koch, *Crime Spree Suspect Arrested*, THE DAILY COMMERCIAL, December 31, 2001 at A2; *See also*, Bill Koch, *Franklin May Plea to Murder*, The Daily Commercial, August 12, 2003, at A1. Mr. Franklin's family further reported that he "used to chant 'vengeance, hooks, rhymes' before he went out to cause trouble." *Id.*

Additionally, Mr. Franklin granted several interviews to the local media. In a January 9, 2002 television interview with WKMG-Channel 6, Mr. Franklin denied the charges in all three cases, but admitted to driving Ms. Johnson's car after other people had it first. *Suspect Denies Charges*, ORLANDO SENTINEL, January 9, 2002, at 2. The Orlando Sentinel published three interviews reporter Mark K. Matthews conducted with Mr. Franklin. In the first interview, which was published on January 17, 2002, Mr. Franklin denied any involvement in the crimes. Mark K. Matthews, *Attack Suspect: 'I Ain't That Cold*', ORLANDO SENTINEL, January 17, 2002, at 1. In the second interview, which was published on January 24, 2002, Mr. Franklin confessed that he killed Mr. Lawley on December 29, 2001 and that he was involved in the December 27, 2001 beating of Ms. Johnson. Mark K. Matthews, *Suspect Admits He Killed Guard;*

> *Franklin Also Says He Beat Elderly Woman With Hammer*, ORLANDO SENTINEL, January 24, 2002, at 1. In a third interview, published on September 21, 2002, Mr. Franklin confessed to killing Mr. Horan on December 19, 2001. Mark K. Matthews, *Suspect Confesses to Another* Killing, ORLANDO SENTINEL, September 21, 2002, at A1. The Orlando Sentinel also published a transcript and an audio recording of the first interview with Mr. Franklin on its website. Sherri M. Owens, *Newspaper Will Release Audio of Confession*, ORLANDO SENTINEL, September 6, 2002, at G1. Although Assistant State Attorney Gross "applauded" the Sentinel's decision to make the tape public, Chief Assistant Public Defender William Stone remarked, "I don't think that trying [Quawn Franklin] in the newspaper and on the Internet is anything close to due process." *Id.*

Id. At 807-13.

In support of these claims, the defense submitted a lengthy report written by venue and jury voir dire experts Edward Bronson, J.D., L.L.M., Ph.D. and William Rountree, J.D., Ph.D. entitled "Report Re. Possible Ineffective Assistance of Counsel in *Florida v. Quawn Franklin*," and requested that it be deemed an appendage to the postconviction motion. PC6/963-1050; PC23/4181. Drs. Bronson and Rountree were listed on the defense witness list, and they would have been available to testify at an evidentiary hearing. PC23/955.

The trial court summarily denied theses claims without an evidentiary hearing in an order dated April 13, 2011. Regarding Claim III, the court stated in part:

> The defendant relies on a report entitled "Report re: Possible Ineffective Assistance of Counsel in *Florida v. Quawn Franklin*,"

which this court has reviewed.

After reading this report the court believes that collateral counsel cannot show that the defendant was actually prejudiced by trial counsel's performance at voir dire.

The record shows the defendant was not "functionally devoid of counsel" during voir dire; the proceedings cover over 350 pages of transcript and counsel questioned the venire on matters related to the case as did the state attorney.

Trial counsel may not have asked as many questions as the assistant state attorney or consumed as many pages of the transcript as the state, but nevertheless trial counsel was present while all of the questions were asked and each of the responses given.

The so-called experts who wrote the aforementioned report have little if any knowledge of the citizens of Lake County; to the contrary defense counsel, who was raised here and went to high school here, is quite familiar with different towns and neighborhoods of Lake County and with its citizens and their backgrounds.

Lake County has been one of the fastest growing counties in the state and is <u>not</u> your stereo typical small southern community as the so-called experts seem to think. Lake County is populated with a rather diverse group of well educated retired folks from all around these fifty (50) United States but mostly from northern part of the country. Many of the folks live in Lake County only part of the year and commonly travel North for the summer. (Snowbird's respectfully). The citizens of Lake County are generally decent folks who have flocked here for the good weather, to live out the Golden years; they are more concerned with volunteer work or their next golf or tennis match, than they are with what's going on in the newspaper.

Additionally, the proposed example questions made by these two (2) experts found on page 45 of their report begs comment. This case concerns only the shooting and killing of a security guard and has

> nothing to do with the two other cases.
>
> The Court believes that if trial counsel had followed the expert suggestions on page 45 of their report we would all be here listening to an argument by collateral counsel that trial counsel went too far by alerting the prospective jurors of the other cases of which the defendant was involved.
>
> The Court suspects that the so-called experts amount to two Monday morning quarterback's who wish they were in the game and think they could make it all look all so easy, but in the end have no real trial skills or guts to get down in the pit.

PC6/1065-66.

The circuit court similarly denied Claim IV, finding that the defendant cannot establish prejudice due to trial counsel's failure to move for change of venue and that:

> Just because there is intense media coverage does not prove that anyone cared to read about it, listen to it, view it or cared one wit about the coverage. As the jury selection in this case bears out, <u>most</u> of the prospective jurors knew <u>nothing</u> about this case or the other crimes involving this defendant . . .

PC6/1067.

Franklin is entitled to an evidentiary hearing because the claims discussed above and raised in his postconviction motion are legally sufficient and not refuted by the record. Furthermore, the circuit court has failed to conclusively show that Franklin is not entitled to any relief. To the contrary, the circuit court's order regarding these claims is based on facts not in evidence, unsupported stereotypes

regarding the demographics of Lake County and its citizens, and insulting conclusions regarding the defense experts, which are refuted by the record.

There is an overarching and unsupported presumption in the circuit court's order that no one in Lake County pays any attention to what is in the news. According to the circuit court, "Just because there is intense media coverage does not prove that anyone cared to read about it, listen to it, view it or cared one wit about the coverage." *Id.* at 1067. He praises the generally decent, retired, well-educated citizens of Lake County who "are more concerned with volunteer work or their next golf or tennis match than they are with what's going on in the newspaper." *Id.* at 1065. Based on these findings, it seems as though the circuit court is of the opinion that there would never be a basis for a change of venue in Lake County and jury selection takes on a much lesser importance because, by virtue of their being citizens of Lake County, everyone on the panel is a decent person who is suitable for jury service on any case. These findings are not supported by the record. Similarly, the court's findings that trial counsel was raised in Lake County and attended high school there, and that they are "familiar with different towns and neighborhoods of Lake County and with its citizens and their backgrounds" is not supported by the record. Furthermore, although the court found that most of the prospective jurors knew nothing about Franklin's other

crimes, we do not know this because they were not specifically asked about the crimes involving Mr. Horan or Mrs. Johnson.

Finally, the circuit court discounted the report of the defense experts, referring to them twice as "so-called experts," and once as "two Monday morning quarterback's who wish they were in the game and think they could make it all look all so easy, but in the end have no real trial skills or guts to get down in the pit." PC6/1065. In fact, these experts have impressive credentials, which are detailed in their report, as well as their resumes, which were attached to the report. *Id.* at 964-69; 1021-39. Dr. Bronson has a J.D. from the University of Denver, an L.L.M. from New York University, and a Ph.D. in Political Science from the University of Colorado. He has over forty years of experience studying and researching pretrial publicity and venue issues, and he has testified or consulted in such well-known cases as the Oklahoma City bombing case, the Enron case, and the Unabomber case, among others. Dr. Rountree has a J.D. from the University of Wisconsin-Madison and a Ph.D. in Sociology from the University of California-Berkley. He has been a trial consultant for eleven years and has worked on over 300 cases in state and federal courts across the country. Although a trial court's decision about qualifications of an expert is ordinarily conclusive, an appellate court can come to an opposite conclusion when it determines that the trial court

reached its decision by applying erroneous legal principles. *McBean v. State*, 688 So. 2d 383 (Fla. App. 4th DCA 1997); *See also*, *U.S. v. Frazier*, 387 F.3d 1244 (11th Cir. 2004) (applying the abuse of discretion standard to the lower court's decisions regarding the admissibility of expert testimony and the reliability of an expert opinion). In the case at hand, the circuit court dismissed Drs. Bronson and Rountree as "so-called experts" and refused to grant and evidentiary hearing in which these experts would have been permitted to testify in support of Claims III and IV of Franklin's postconviction motion. Based on the impressive qualifications of these two men, the court's findings regarding their credentials are clearly erroneous and amount to an abuse of discretion.

CONCLUSION

Based on the foregoing, the circuit court improperly denied Franklin relief on his 3.851 motion. Relief is warranted in the form of a new trial, a new sentencing proceeding, an evidentiary hearing on Claims III and IV of his postconviction motion, or any other relief that this Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Initial Brief of Appellant has been furnished by United States Mail, first class postage prepaid, to all counsel of record and the Defendant on this 3rd day of August, 2012.

Mark S. Gruber
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
CAPITAL COLLATERAL REGIONAL
COUNSEL - MIDDLE
3801 Corporex Park Drive, Suite 210
Tampa, FL 33619
(813) 740-3544
Counsel for Appellant

Copies furnished to:

Stephen Ake, Esq.
Assistant Attorney General
Office of the Attorney General
Concourse Center 4
3507 East Frontage Road, Suite 200
Tampa, FL 33607-7013

Quawn Franklin
DOC # 268130
Union Correctional Institution
7819 NW 228th Street
Raiford, FL 32026

CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Initial Brief of Appellant was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210 (a) (2).

Mark S. Gruber
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
(813) 740-3544

Counsel for Appellant