IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-578
L.T. CASE NOS. 5D08-3779, 5D10-3021

LEIGHDON HENRY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____ /

PETITIONER'S REPLY BRIEF ON THE MERITS

On Discretionary Review From a Decision
of the Fifth District Court of Appeal

CARLTON FIELDS, P.A.
215 S. Monroe Street, Suite 500
Post Office Drawer 190
Tallahassee, Florida 32302
Telephone: (850) 224-1585
Facsimile: (850) 222-0398

CARLTON FIELDS, P.A.
4200 Miami Tower
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 530-0050
Facsimile: (305) 530-0055

Christopher B. Corts
Assistant Professor of Legal Writing
UNIVERSITY OF RICHMOND
SCHOOL OF LAW
28 Westhampton Way
Richmond, VA 23173
Telephone: (804) 289-8189

By: Peter D. Webster
David L. Luck
Christopher B. Corts
Pro-Bono Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Constitutional Provisions

Articles and Treatises

ARGUMENT

I. MR. HENRY'S 90-YEAR RESENTENCE VIOLATES THE FEDERAL EIGHTH AMENDMENT AND ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION.

More than three years have passed since the United States Supreme Court decided *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 (2010). As in prior years, the Florida Legislature's 2013 attempt at *Graham* compliance failed.[1]

Given the Legislature's continued inaction, it is now up to this Court to ensure that the state which caused *Graham* complies with its mandate: "Legislative inaction cannot serve to close the doors of the courtrooms of this state to its citizens who assert cognizable constitutional rights." *Satz v. Perlmutter*, 379 So. 2d 359, 360 (Fla. 1980).

A. Standard Of Review – *De Novo.*

There are no mixed questions of law and fact at issue here. Rather, this case involves a pure issue of constitutional interpretation and an intertwined, as-applied constitutional challenge. Therefore, the correct standard of review is *de novo*. *Garcia v. Andonie*, 101 So. 3d 339, 343 (Fla. 2012).

---

[1] *See* 2013 Senate Bill 1350 and 2013 House Bill 7137. http://www.flsenate.gov/Session/Bill/2013/1350 (died on calendar May 3, 2013); http://www.flsenate.gov/Session/Bill/2013/7137 (died on calendar May 3, 2013) (last accessed May 23, 2013).

B. *Graham* Requires The States To Provide Juvenile Non-Homicide Offenders With Realistic, Meaningful Opportunities To Demonstrate Rehabilitation And Seek Release Within Their Lifetimes.

The protections against "cruel and unusual" punishment embodied in the federal Eighth Amendment and Article I, section 17 of the Florida Constitution are coextensive. Article I, section 17 is material here precisely because it requires this Court to comply with the majority "decisions of the United States Supreme Court which interpret" the Eighth Amendment. Consequently, the State's article I, section 17 "preservation" argument is meritless. [AB at 11 n.3]. By relying on the federal Eighth Amendment at all stages of this case, Mr. Henry has necessarily triggered the coextensive protection of article I, section 17. *See, e.g., Ventura v. State*, 2 So. 3d 194, 198 n.4 (Fla. 2009).

Graham "created a new fundamental constitutional right whose application has retroactive effect." *Johnson v. State*, No. 1D12-3854, --- So. 3d ----, 2013 WL 1809685, at *1 (Fla. 1st DCA Apr. 30, 2013). As stated in Mr. Henry's initial brief, *Graham* held that the Eighth and Fourteenth Amendments to the United States Constitution preclude the states from sentencing juvenile non-homicide offenders to die in prison with no opportunity for parole. [IB at 4, 8-34]; *Graham*, 130 S. Ct. at 2019-34; *see also, e.g., People v. Caballero*, 282 P.3d 291, 293-96 (Cal. 2012) (110-year aggregate sentence violated *Graham*); *People v. Rainer*, No. 10CA2414, --- P.3d ----, 2013 WL 1490107, at *7-*15 (Colo. Ct. App. Apr. 11,

2013) (same; 112-year aggregate sentence); *Floyd v. State*, 87 So. 3d 45, 47 (Fla. 1st DCA 2012) ("common sense dictates that Appellant's eighty-year [aggregate] sentence . . . is the functional equivalent of a life without parole sentence and will not provide him with a meaningful or realistic opportunity to obtain release").[2]

Rather than recognize this fundamental right, the State would reduce *Graham* to a rule of sentencing semantics – so long as the sentence does not include the adjective "life," *Graham* has no application. *See* [AB at 8-23]. Under this approach, 90- and 130-year sentences (and presumably 300-year sentences) are of no constitutional significance despite the fact that they are functionally indistinguishable from a "life" sentence. *Compare Henry v. State*, 82 So. 3d 1084 (Fla. 5th DCA 2012) (upholding 90-year aggregate sentence), *and Mediate v. State*, 108 So. 3d 703 (Fla. 5th DCA 2013) (same; 130-year aggregate sentence), *with United States v. Mathurin*, No. 09-21075-Cr., 2011 WL 2580775 (S.D. Fla. June 29, 2011) (holding unconstitutional under *Graham* a 307-year aggregate sentence for multiple non-homicide felonies). Indeed, under the State's misreading of

---

[2] Mr. Henry did not mount a "gross disproportionality" challenge (*i.e.*, what the State calls a "straight proportionality argument" [AB at 19]) below or in this Court because his 90-year resentence falls within *Graham*'s categorical bar against sentencing juvenile non-homicide offenders to die in prison with no hope of potential release. As *Graham* explained, a gross disproportionality analysis does not apply to this category of term-of-years sentences. *See* 130 S. Ct. at 2021-34; *Rainer*, 2013 WL 1490107, at *13-*15.

Graham, on remand from the Supreme Court, the Florida circuit court could have resentenced Terrance J. Graham to an aggregate term of years that exceeded his life expectancy and offered no hope of release because he too committed multiple, serious felony offenses. *See* [IB at 33-34 & n.19].

Fortunately for Mr. Graham, Mr. Henry, and those like them, *Graham* does not support such Orwellian logic. *People v. De Jesús Nuñez*, 195 Cal. App. 4th 414, 425 (Cal. 4th DCA 2011) ("Finding a determinate sentence exceeding a juvenile's life expectancy constitutional because it is not labeled an LWOP sentence is Orwellian. Simply put, a distinction based on changing a label, . . . is arbitrary and baseless."), *rev. dismissed*, 148 Cal. Rptr. 3d 499 (Cal. 2012) (decision approved in light of *Caballero*, 282 P.3d 291). *Graham*'s mandate does not change simply because a sentence that undeniably exceeds a juvenile's life expectancy is not labeled "life." Labels aside, in either situation, the "sentence does not provide a meaningful opportunity for parole in a juvenile's lifetime" and runs afoul of *Graham*'s reasoning as to reduced juvenile culpability, increased possibility for reform, and inadequate penological justification. *Thomas v. Pennsylvania*, No. 10-4537, 2012 WL 6678686, at *2 (E.D. Pa. Dec. 21, 2012).

The State and several of the intermediate Florida decisions on which it relies purport to apply *Graham* "as written," but as the State itself concedes in a footnote:

> There is language in the *Graham* majority opinion that suggests that no matter the number of offenses or victims or type of crime, a

> juvenile [non-homicide offender] may not receive a sentence that will cause him to spend his entire life incarcerated without a chance for rehabilitation, in which case it . . . make[s] no logical difference whether the sentence is "life" or 107 years.

[AB at 23 n.7] (quoting *Henry*, 82 So. 3d at 1089). This is the dispositive flaw in the State's position – *i.e.*, it and the Florida decisions on which it relies have not applied *Graham* "as written." Instead, they have selectively taken language out of context from the *Graham* majority opinion, have adopted the interpretations of the *Graham* dissenters (in violation of article I, section 17), and, thereby, have eviscerated *Graham*'s foundational principle: "children are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 132 S. Ct. 2455, 2458 (2012) (describing *Graham*).

The Fifth District's decision in *Henry* and the Second District's decision in *Walle v. State*, 99 So. 3d 967 (Fla. 2d DCA 2012), typify this approach and are wrong for two fundamental reasons. *See also State v. Brown*, No. 12-KP-0872, --- So. 3d ----, 2013 WL 1878911 (La. May 7, 2013); *Guzman v. State*, No. 4D12-1354, --- So. 3d ----, 2013 WL 949889 (Fla. 4th DCA Mar. 13, 2013) (same mistaken reasoning). First, these cases fail to acknowledge *Graham*'s declaration that it addressed a "term-of-years sentence," which guaranteed the Petitioner would "die in prison." 130 S. Ct. at 2022, 2033. Accordingly, their insistence that *Graham* applies only to "actual life" sentences (and not "term-of-years sentences") directly contradicts the Supreme Court's analysis: "The present case involves an

issue the Court has not considered previously: a categorical challenge to a term-of-years sentence." *Graham*, 130 S. Ct. at 2022. The fallacy that *Graham* does not reach term-of-years sentences comes from the *Graham* dissenters, not the *Graham* majority decision – which this Court is required to follow under article I, section 17. *See* [IB at 31-32].

These same "as written" cases also ignore the related, broad language from *Graham* recognizing that the High Court chose a "categorical rule" to give "all juvenile nonhomicide offenders a chance to demonstrate maturity and reform." 130 S. Ct. at 2032-34. As the Colorado Court of Appeals recently explained:

> [*Graham*] did not employ a rigid or formalistic set of rules designed to narrow the application of its holding. Instead, it utilized broad language, condemning the sentence of life without parole in that case for qualitative reasons . . . .
>
> . . . *Graham* employed expansive language to define its sentencing requirements for juvenile nonhomicide offenders, stating that sentences must offer "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," and "give[] all juvenile nonhomicide offenders a chance to demonstrate maturity and reform" and "the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." Indeed, even the closing words of the *Graham* opinion do not focus on a specific formalistic definition of what constitutes an allowable term-of-years sentence for a nonhomicide juvenile offender, but provide only that while a state "need not guarantee the [nonhomicide juvenile] offender eventual release . . . it must provide him or her with some realistic opportunity to obtain release."

Rainer, 2013 WL 1490107, at *13-*14 (citations omitted) (quoting *Graham*, 130 S. Ct. at 2030-34); *see also* [IB at 11-34].

The second fundamental flaw in the State's "as written" cases is that they overlook the fact that Graham himself was a recidivist offender who, in the relevant criminal episode, committed two serious felonies against the same victim (armed burglary and attempted robbery). *Graham* never indicated that it would be permissible for the State of Florida, on remand, to aggregate Graham's sentences on these two felonies such that the combined sentence would exceed his life expectancy. *See* 130 S. Ct. at 2021-34; *see also, e.g.*, *Nuñez*, 195 Cal. App. 4th at 425 ("The ['multiple offenses'] distinction finds no traction in *Graham*, given the juvenile there was a recidivist offender sentenced on multiple felonies[.]"); [IB at 33-34 & n.19]. Nevertheless, that is precisely what decisions like *Henry* and *Walle* encourage the State to do in order to avoid and eviscerate *Graham*.[3]

---

[3] The remainder of the State's *Graham*-related case law that appears in [AB at 21 n.6] is inapposite, incorrect, or both as explained in [IB at 30-34 & n.17]. As to the new cases the State has added, the following points should be recognized, which render these cases inapposite. *People v. Taylor*, No. 4-11-0926, 2013 WL 164909 (Ill. 4th DCA Jan. 9, 2013) (homicide case involving several counts of first-degree murder); *Goins v. Smith*, No. 4:09-CV-1551, 2012 WL 3023306 (N.D. Ohio July 24, 2012) (case subject to highly stringent federal AEDPA postconviction standard that is immaterial here); *Diamond v. State*, Nos. 09-11-00478/479-CR, --- S.W.3d ---, 2012 WL 1431232 (Tex. Ct. App. Apr. 25, 2012) (case fails to even mention *Graham* over a well-reasoned dissent, and Texas, unlike Florida, still has a broadly applicable parole system); *People v. Gay*, 960 N.E.2d 1272 (Ill. 4th DCA 2011) (case does not involve a juvenile offender); *Smith v. State*, 258 P.3d 913 (Alaska Ct. App. 2011) (case involves only a 10-year sentence); *United States v. Scott*, 610 F.3d 1009 (8th Cir. 2010) (case does not involve a juvenile offender).

As it did with Mr. Henry, the State often charges juvenile non-homicide offenders with multiple felonies stemming from a single criminal episode. *See Johnson v. State*, No. 5D12-1822, --- So. 3d ----, 2013 WL 1918846, at *1 (Fla. 5th DCA May 10, 2013) (recognizing that Mr. Henry's 90-year resentence "arose from a single criminal episode").[4] Consistent with *Graham*, Mr. Henry's aggregate sentence for one night's criminal episode involving a single victim cannot be used as a means to determine at the outset that he is forever irredeemable. His sentence, like that of Mr. Graham, violates the Eighth Amendment because it "guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character." *Graham*, 130 S. Ct. at 2033. *Graham* and the Eighth Amendment do not permit guaranteed discharge in a coffin.

C. Following *Graham*, Parole Eligibility Is The Only Remedy That Ensures Mr. Henry's Sentence Complies With The Federal And Florida Constitutions.

1. Parole Hearings Can Fulfill *Graham*'s Mandate.

The State never disputes Mr. Henry's contention that regular parole review would fulfill *Graham*'s mandate. [IB at 35-49]; *see also Smith v. State*, 93 So. 3d 371, 375-78 (Fla. 1st DCA 2012) (Padovano, J., concurring); *Gridine v. State*, 89

[4] Recall that before trial, the State offered Mr. Henry a plea bargain of 30 years total for all of his offenses. (SR. 1:371-72).

So. 3d 909, 911 (Fla. 1st DCA 2011) (Wolf, J., dissenting). Indeed, the State concedes that this remedy "appears . . . sufficient," [AB at 28], and does not dispute the Third District's holding in *Cunningham v. State* that access to Florida's existing parole system satisfies *Graham*. 54 So. 3d 1045 (Fla. 3d DCA 2011).

Despite the availability of a legislatively-established parole system under chapter 947, Florida Statutes, [IB at 36-49], the State asks this Court – as policymaker – to promulgate an elaborate "rule of procedure" that would create and implement a system of quasi-parole and lifelong probation. While the State cautions against this Court enacting substantive measures [AB at 29], its proposed remedy does precisely that. *See* [AB at 27-28]. This is unnecessary and improper under separation-of-powers principles. *See* art. II, § 3, Fla. Const.; [IB at 40-49]. The Legislature has addressed these same policy issues through chapter 947. The existing parole system must simply be opened to juvenile non-homicide offenders:

- **At what point during an overall term of years would a juvenile non-homicide offender be entitled to an "opportunity for release"?** *See* § 947.16, Fla. Stat. (2012) ("Eligibility for parole; initial parole interviews; powers and duties of commission"); §§ 947.172-.1747, Fla. Stat. (2012) (addressing presumptive and effective parole release dates and subsequent parole interviews); § 947.165, Fla. Stat. (2012) ("Objective parole guidelines").

- **What is the extent of the "opportunity for release" to which the juvenile is entitled?** *See* §§ 947.18, 947.19, 947.21, Fla. Stat. (2012) (addressing conditions, terms, and revocation of parole); § 947.24, Fla. Stat. (2012) ("Discharge from parole supervision or release supervision").
- **What is the form of potential release that satisfies *Graham* but also satisfies society's interests?** *See generally* ch. 947, Fla. Stat. (2012); [IB at 48-49 & n.26].

Accordingly, there is no need for this Court to act as policymaker.

2. The Florida Statutes Denying Juvenile Non-Homicide Offenders Access To Parole Hearings Are Unconstitutional As Applied And May Be Severed As To This Class Of Offenders.

The State's contention that Mr. Henry's as-applied constitutional challenge is unpreserved because it was not raised below is baseless. *See* [AB at 25-26]. Mr. Henry – a *pro se* appellant below – expressly preserved this issue by presenting his as-applied challenge to both the circuit court and the Fifth District.

While the appeal of Mr. Henry's conviction and sentence was pending before the Fifth District, *Graham* was decided – prompting him to present authorized Rule 3.800(b) motions to the circuit court, specifically arguing that section 921.002(1)(e), Florida Statutes, is unconstitutional as applied to him under *Graham*. *See* [IB at 4-5]. When the circuit court denied his constitutional challenge to section 921.002(1)(e), Mr. Henry separately appealed that order to the

Fifth District (case no. 5D10-3021), which was then consolidated with his already-pending appeal (case no. 5D08-3779). *See* (R. 92, 124).

Nevertheless, the State contends Mr. Henry's as-applied constitutional challenge is unpreserved because "it was not supported by any legal argument." [AB at 25]. But in a circuit-court motion entitled "Motion to Declare §921.002(1)(e), Fla. Stat. Unconstitutional as Applied," Mr. Henry made a straightforward legal argument – based on *Graham* – that the "cumulative effect" of his term-of-years sentences meant that, "[a]ccording to the reasoning in *Graham*, it logically follows that Florida Statute §921.002(1)(e) is unconstitutional as applied to this Defendant." (3.800 R. 1:19, 32-36). Mr. Henry also made this same argument in his handwritten *pro se* briefing to the Fifth District – discussing the statute, relevant constitutional provisions, and *Graham*. [5th DCA IB at 22; 5th DCA RB at 7]. This issue **was** preserved, particularly since *pro se* filings must be liberally interpreted to do justice and afford the litigant the advantage denied him by his lack of legal training. *Gust v. State*, 558 So. 2d 450, 453 (Fla. 1st DCA 1990); *see also, e.g.*, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (same).

Moreover, this is not a separate argument. It is, instead, the remedy that follows ineluctably from the application of *Graham* to this class of offenders. [IB at 35-49]; *see also, e.g.*, Leslie P. Wallace, *"And I Don't Know Why It Is That You Threw Your Life Away": Abolishing Life Without Parole, The Supreme Court in*

Graham v. Florida Now Requires States to Give Juveniles Hope For a Second Chance, 20 B.U. PUB. INT. L.J. 35, 68 (2010) ("to carry out [*Graham*'s] . . . mandate, all states will need an active parole board and rehabilitative measures"); Cara H. Drinan, *Graham on the Ground*, 87 WASH. L. REV. 51, 77 (2012) (same).

The State further contends this issue is not properly before this Court because Mr. Henry "has set forth no specific legal argument in the instant case demonstrating this statute is unconstitutional as applied to him." [AB at 26]. The only support the State offers for its assertion is *Newell v. State*, 875 So. 2d 747, 748 (Fla. 2d DCA 2004) – a case in which the Second District rejected an appellant's "generalized attack" on the constitutionality of a statute because he did not provide "any significant analysis or citation to legal authority." In contrast, here, Mr. Henry devoted 14 pages of his initial brief to this particular issue, explaining in detail, with ample legal authority, that section 921.002(1)(e) cannot stand as applied to him (and others like him) because it denies this class of offender the meaningful, realistic opportunity to seek potential release required under *Graham*. [IB at 35-49]. The State's "preservation" position is meritless.

In addition to its "preservation" contentions, the State argues that the remedy proposed by Judge Padovano in his *Smith* concurrence and by Mr. Henry in the initial brief is overbroad because "not all juveniles sentenced as adults receive an

extensive term of years, and there is no need to make them all parole-eligible." [AB at 26]. Not so.

As detailed above and in the initial brief, *Graham* applies to all term-of-years sentences that guarantee a juvenile non-homicide offender will die in prison with no hope of potential release. Further, Judge Padovano explained correctly that to comply with *Graham* and avoid any "line-drawing" problem regarding when a term-of-years sentence crosses this threshold, all of Florida's juvenile non-homicide offenders should receive regular parole review under chapter 947. *Smith*, 93 So. 3d at 375-78 (Padovano, J., concurring). The State is not required in all cases to release them, but it must provide them with meaningful parole review:

> [T]he courts will never be able to draw a line between a sentence to a term of years that offends the Eighth Amendment and one that does not. . . .
>
> The principle announced in *Graham* is clear, and it is apparent to me that it would apply to a sentence for a term of years in the same way that it applies to a sentence of life. We can apply the spirit of the *Graham* decision, as Judge Wolf put it, by declaring invalid the law restricting parole eligibility as it applies to this class of offenders. The Eighth Amendment requires the possibility of release, and . . . that possibility can be afforded only by a system of parole eligibility. It follows that a statute restricting parole eligibility violates the Eighth Amendment as applied to juvenile [non-homicide] offenders.

Id. at 378.

Alternatively, as several courts from across the country have done, this Court could require regular parole review for those juvenile non-homicide offenders whose sentences exceed their life expectancies under the CDC's

National Vital Statistics Reports. [IB at 33 n.18]; *see also, e.g.*, *Rainer*, 2013 WL 1490107, at *6, *11-*13 & n.6. The relevant figure as to Mr. Henry is in the Record and shows that his 90-year resentence exceeds his life expectancy by three decades – a term that is unconstitutional under *Graham* by any measure. (3.800 R. 1:33; PSR. at 25); *see also* [Amicus Br. of Juv. Law Ctr. at 3-4 n.1].

The difficulty with this solution, however, is that drawing that line raises possible equal-protection and due-process concerns regarding the provision of potential early release to *Graham* offenders while withholding it from juvenile non-homicide offenders who, for example, are sentenced to only 10 or 20 years. *See* U.S. Const. amend. XIV; art. I, §§ 2, 9, Fla. Const. For instance, a *Graham* offender who demonstrates maturation and rehabilitation after 10 years could be released following parole review; whereas, a juvenile non-homicide offender who committed a less serious offense and is sentenced to 20 years would have to serve at least 85 percent of the entire sentence notwithstanding the potential to demonstrate maturation and rehabilitation at a much earlier stage. *See, e.g.*, § 944.275(4)(b)3., Fla. Stat. (2012); *cf. Swanson v. State*, 98 So. 3d 135, 135 (Fla. 1st DCA 2012) (Clark, J., concurring specially) (expressing serious concern regarding "the imposition of a 22-year prison sentence [without parole] for . . . a juvenile with no prior criminal or delinquency record, who committed [an] armed robbery with a BB gun, but did not shoot at or strike the victim"). For that reason, the

remedy should be as Judge Padovano and Mr. Henry suggest: regular parole review for all of Florida's incarcerated juvenile non-homicide offenders. *Smith*, 93 So. 3d at 375-78 (Padovano, J., concurring); [IB at 32-49]. Indeed, *Graham* articulated a new, fundamental constitutional right to give "**all** juvenile nonhomicide offenders a chance to demonstrate maturity and reform." *Graham*, 130 S. Ct. at 2032 (emphasis supplied).

To afford Mr. Henry (and those like him) a constitutionally-compliant remedy, the Court need only ensure that the Legislature's comprehensive parole system, set forth in chapter 947, Florida Statutes, provides this class meaningful opportunities to demonstrate rehabilitation and seek potential release within their lifetimes. *Graham*, the Eighth Amendment, and article I, section 17 require nothing more – and Mr. Henry is entitled to nothing less.

CONCLUSION

For the reasons detailed above and in his initial brief, Petitioner, Leighdon Henry, respectfully requests that this Court reverse the Fifth District's decision below and remand with instructions that he be resentenced to a combined term-of-years sentence with parole eligibility.

Respectfully submitted,

CARLTON FIELDS, P.A.
215 S. Monroe Street, Suite 500
Post Office Drawer 190
Tallahassee, Florida 32302

CARLTON FIELDS, P.A.
4200 Miami Tower
100 Southeast Second Street
Miami, Florida 33131

Telephone: (850) 224-1585
Facsimile: (850) 222-0398

CHRISTOPHER B. CORTS
Florida Bar No. 91374
Assistant Professor of Legal Writing
UNIVERSITY OF RICHMOND
SCHOOL OF LAW
28 Westhampton Way
Richmond, VA 23173
Telephone: (804) 289-8189

Telephone: (305) 530-0050
Facsimile: (305) 530-0055

PETER D. WEBSTER
Florida Bar No. 185180
pwebster@carltonfields.com
DAVID L. LUCK
Florida Bar No. 041379
dluck@carltonfields.com
CHRISTOPHER B. CORTS
Florida Bar No. 91374
christophercorts@gmail.com

Pro-Bono Counsel for Petitioner Leighdon Henry

CERTIFICATE OF SERVICE

We CERTIFY that a copy of this brief was served by U.S. Mail and e-mail on this 28th day of May 2013, to:

Pamela J. Bondi
Attorney General, State of Florida
Office of the Attorney General
The Capitol PL-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Fax: (850) 922-6674
pam.bondi@myfloridalegal.com

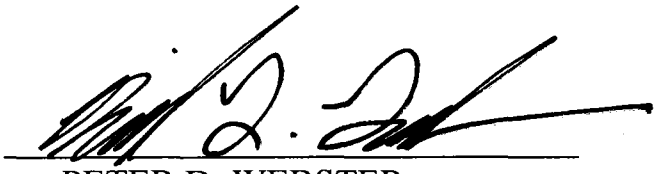
Wesley Heidt and Kellie A. Nielan
Assistant Attorneys General, State of Florida
Office of the Attorney General, Criminal Appeals Division
444 Seabreeze Boulevard, Suite 500
Daytona Beach, FL 32118
Telephone: (386) 238-4990
Fax: (386) 238-4997
crimappdab@myfloridalegal.com

Counsel for Respondent

By: _____
PETER D. WEBSTER
DAVID L. LUCK
CHRISTOPHER B. CORTS

CERTIFICATE OF COMPLIANCE

The undersigned counsel certify that this brief complies with Florida Rule of Appellate Procedure 9.210's font requirements by using Times New Roman 14-point text.



PETER D. WEBSTER
DAVID L. LUCK
CHRISTOPHER B. CORTS