

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC12-2349

FILED
THOMAS D. HALL
2013 MAR 11 AM 8:57
CLERK SUPREME COURT
BY _____

NORMAN BLAKE MCKENZIE,

Petitioner,

v.

KENNETH S. TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS
& PAMELA JO BONDI, ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.

REPLY BRIEF OF THE PETITIONER (WRIT OF HABEAS CORPUS)

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TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS ii

REPLY TO STATE'S RESPONSE TO PETITION 1

REPLY TO ARGUMENT I THE MENTAL ILLNESS CLAIM. 2

CERTIFICATE OF SERVICE 5

CERTIFICATE OF COMPLIANCE 6

REPLY TO STATE'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Mr. McKenzie respectfully urges that his Petition should be granted, not denied.

REPLY TO STATE'S INTRODUCTION

The State is correct that Mr. McKenzie "claims that his convictions and death sentences—and their affirmation by this Court—were obtained in violation of the Constitutions of the United States and the State of Florida." They were.

REPLY TO STATE'S PROCEDURAL HISTORY

At pages 2-8 the State simply block quotes portions from this Court's opinion following direct appeal. While essentially accurate, the Petitioner submits that the State's abbreviated recitation of past procedural history fails to acknowledge significant factual developments in postconviction that have cast quite a substantial and illuminating light on Mr. McKenzie's psychological composition, condition, and affliction.

REPLY TO STATE'S ISSUES RAISED ON APPEAL

The Petitioner does not dispute that he "raises the single claim that the execution of 'mentally ill' individuals violates the Eighth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida Constitution." The undersigned would just add here that at the time of the offense, Mr. McKenzie was certainly severely mentally ill, and the evolving standards of decency should decry

this man's execution.

REPLY TO STATE'S RESPONSE TO INTRODUCTION

Here the State claims that "The legal authority McKenzie cites in the body of the petition's argument existed at the time of McKenzie's direct appeal." As such, that legal authority should have been raised in support of relief on direct appeal.

REPLY TO STATE'S RESPONSE TO JURISDICTIONAL STATEMENT

The State incorrectly asserts here that "McKenzie's petition does not set out appropriate grounds for relief."

REPLY TO ARGUMENT I THE MENTAL ILLNESS CLAIM

The State claims here that the Petitioner does not have any "specific mental illnesses," and that only "obtuse references" have been made to any mental illnesses. To the contrary, Dr. Cunningham's report was quite detailed, providing a very detailed description of a variety of mental illnesses, along with a variety of reasons for the psychological conditions found in Mr. McKenzie. Without getting too deep into the substance of Dr. Cunningham's report, Dr. Cunningham found the following 25 specific conditions present within Norman Blake McKenzie:

Transgenerational

1. Trans-generational family dysfunction and distress
2. Hereditary predisposition to psychological disorder and personality pathology
3. Hereditary predisposition for alcohol and drug abuse/dependence

Neuro-developmental

4. Fetal cigarette exposure
5. Fetal alcohol exposure
6. Pregnancy and birth complications
7. Childhood symptoms consistent with Attention Deficit Hyperactivity Disorder
8. Inhalant abuse
9. Alcohol and drug abuse
10. Chronic stress in childhood
11. Hepatitis C and HIV status

Parenting and family

12. Mother in mid-teens at parenting onset
13. Physical and psychological abuse
14. Functional abandonment by father
15. Physical and emotional neglect post-divorce
16. Perverse family sexuality and probable family-context sexual abuse
17. Observed family violence
18. Mother's alcohol abuse
19. Corruptive and alcoholic stepfather figures
20. Corruptive influence of siblings

Community

21. Traumatic sexual exposures and abuse
22. Availability of alcohol and illicit drugs

Disturbed trajectory

23. Childhood onset alcohol and drug abuse
24. Substance-related offending and incarceration in early adulthood

25. Cocaine-induced psychological decompensation and extended sleep deprivation at the time of the offense

These factors are far from "obtuse references." Nor are they "vague references in the proffered mitigation." Nor do these conditions amount to simply a "self-described mental illness from [Mr. McKenzie's] recorded confessions."

The State claims on page 14 that "[Dr. Cunningham] offers no opinion about Mr. McKenzie's mental state during the recorded interrogations." Dr. Cunningham actually offered something much more significant:

- (a) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (b) The defendant acted under extreme duress or under the substantial domination of another person.
- (c) The capacity of the defendant to appreciate the criminality of his [] conduct or to conform his [] conduct to the requirements of law was substantially impaired.

Dr. Cunningham found that those statutory mitigating factors were established because of the 25 toxic psychological and environmental conditions previously cited.

Also at page 14, the State makes the following bold assertion: "[Mr. McKenzie] is not mentally ill." That claim, in

this double-hatchet homicide fueled by cocaine-induced paranoia, more than 7 days of sleep deprivation, childhood abuse-and-neglect-resultant PTSD, and severe mental illness, is truly wild and fanciful.

Due to the highly mitigating circumstances in this case yet to be considered by a sentencing body, and due to very severe and persistent mental illness, and in light of the evolving standards of decency in capital sentencing, this Court should grant the Writ.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on Mitchell Bishop, Assistant Attorney General, by e-mail to CapApp@myfloridalegal.com and mitchell.bishop@myfloridalegal.com on this 4th day of March, 2013.



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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Reply Brief was generated in a courier new 12 point font, pursuant to Fla. R. App. P. 9.210.



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STATE OF FLORIDA
LAW OFFICE OF THE
CAPITAL COLLATERAL
REGIONAL COUNSEL
MIDDLE REGION



BILL JENNINGS
CAPITAL COLLATERAL REGIONAL COUNSEL

VICKI BUTTS
EXECUTIVE DIRECTOR

March 4, 2013

The Honorable Thomas D. Hall
Clerk, Supreme Court of Florida
ATTN: Tangy Williams
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1927

Re: Norman Blake McKenzie v. STATE OF FLORIDA
Case No. SC12-2349

FILED
THOMAS D. HALL
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CLERK, SUPREME COURT
BY _____

Dear Mr. Hall:

Enclosed for immediate filing in the above-captioned case are:

1. Original and seven (7) copies of Reply Brief of Petitioner (Writ of Habeas Corpus);
2. A copy of the first and last pages of the above-referenced documents for return to CCRC-M after stamping with the date of filing;
3. A pre-addressed, stamped envelope.

Please use the enclosed envelope to return the copies of the first (date-stamped) and signature pages of the documents to our office.

Copies have been provided to opposing counsel of record by first class mail. Thank you for your assistance in this matter.

Sincerely,

151
David D. Hendry
Assistant CCRC

DDH/kdf

Enclosures

cc: Mitchell Bishop, Assistant Attorney General
Norman McKenzie, Petitioner