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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1472

RONNIE KEITH WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This capital case involves the appeal of the circuit court's denial of Appellant's motions for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.851 and 3.203. The following abbreviations will be utilized to cite to the record in this matter, with appropriate page number(s) following the abbreviation:

"R." - record on direct appeal to this Court;

"1996 T." - transcripts for first trial on direct appeal to this Court;

"T. - transcripts for 2004 retrial on direct appeal to this Court;

"PCR." - record on appeal following the postconviction denial;

"DE" or "SE" - exhibits entered into evidence at the evidentiary hearing.

REQUEST FOR ORAL ARGUMENT

The Appellant has been sentenced to death. This Court has not hesitated to allow oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument would be more than appropriate in this case, given the seriousness of the claims involved. Appellant, through counsel, urges this Court to permit oral argument.

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STATEMENT OF THE CASE

On March 4, 1993, Appellant, Ronnie Keith Williams, was charged by indictment with the capital first-degree murder of Lisa Dyke. Williams, represented at trial by court-appointed counsel Bruce Raticoff, was convicted as charged. Based on a jury recommendation of 11-1, the Honorable Judge Sheldon Shapiro sentenced Williams to death. (1996 T. 2439, 2467-74.) However, this Court reversed the conviction and sentence and remanded for a new trial, holding that it was reversible error for the trial court to replace an original juror who was unable to proceed after deliberations had begun but before the guilt phase verdict was returned. *Williams v. State*, 792 So. 2d 1207 (Fla. 2001).

Upon remand, attorneys Evan Baron and Hale Schantz were appointed to represent Williams in his retrial. Following a mistrial in 2003, jury selection began anew on January 27, 2004. On February 12, 2004, the jury found Williams guilty of both premeditated and felony murder. The penalty phase was held on March 1, 2004, a little more than two weeks later. The jury's recommendation was 10-2 in favor of the death penalty. (T. 1717-19.)

Following a *Spencer*[1] hearing held on April 8, 2004, the trial court followed the jury's recommendation and sentenced Williams to death on April 16, 2004. This Court affirmed Williams's conviction and sentence on direct appeal. *Williams v.*

[1] *Spencer v. State*, 615 So. 2d 688, 690-91 (Fla. 1993).

State, 967 So. 2d 735 (Fla. 2007), *cert. denied Williams v. Florida*, 552 U.S. 1283 (March 24, 2008).

Capital Collateral Regional Counsel-South was appointed to represent the Appellant on November 7, 2007. (PCR 76-77.) The prosecutor failed to timely notify a number of relevant agencies of their duty submit records to the state records repository in accordance with Florida Rule of Criminal Procedure 3.852(e). The delay resulted in Williams requesting an extension of time to review the records in order to prepare demands for supplemental records to each agency pursuant to Rule 3.852(g).

On February 14, 2008, the Florida Department of Corrections (DOC) submitted **some** records to the state records repository and filed a "Notice of Compliance." (PCR. 1452.) In May of 2008, Williams received hard copies of some of the records that are exempt from public disclosure such as his medical records and the Pre-Sentence Investigation report. A second "Notice of Compliance" was filed on June 5, 2008 with respect to updated medical records. (PCR. 1465.) On September 12, 2008, Williams filed a Rule 3.852(g) demand for records relating to lethal injection and records relating to his own incarceration. (PCR. 1469-76.)

Even though he did not have all of the records from DOC, Williams timely filed his initial motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851 on March 12, 2009. (PCR. 686-782). Williams alleged, *inter alia*,

that Florida Rule of Criminal Procedure 3.852 is unconstitutional on its face and as applied (Claim 1), that the failure of the State to provide minimally competent counsel in the first trial was a violation of due process (Claim 3), that trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984) in the investigation and preparation of both the guilt and penalty phases (Claims 5 and 9), and Williams was deprived of his right to a competent mental health evaluation under *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985) (Claim 8). He simultaneously filed a "Motion for Determination of Mental Retardation" pursuant to Florida Rule of Criminal Procedure 3.202. (PCR. 783-786.)

The public records litigation continued and DOC submitted **some** more records to the repository and filed the third "Notice of Compliance" on April 28, 2009. (PCR. 1478.) It was after the "Notice of Compliance" was filed that Williams learned that DOC unilaterally withheld records that were contained in an "inactive" file. The records regarding his prior incarceration in Hendry County (July 3, 1985 through May 1, 1992) had not been turned over despite the fact that the second degree murder conviction that led to that incarceration had been used against him as an aggravator. DOC also failed to provide records during the period that Williams was on probation or parole in 1982 through 1985 and in 1993. Additionally, DOC failed to provide documents such as grievances, classes attended, certificates obtained, canteen orders, inmate account balances and financial records. It was only

after Williams brought these missing items to DOC's attention that **some** additional records were submitted to the repository. DOC filed the fourth "Notice of Compliance" on November 16, 2009. (PCR. 1488.)

DOC's 2009 submission did not include any records of the prior incarceration; therefore, Williams filed a motion to compel the records on December 9, 2009. (PCR. 1494-97.) DOC filed a response to Williams's motion to compel stating that "although additional records have been found with each search, the Department is now confident that all existing records within the Department's possession have been delivered to the Repository." (PCR. 1499.) On December 31, 2009, DOC submitted **some** more records and then filed the fifth "Notice of Compliance." (PCR. 1608.) The DOC denied having possession of the records of prior incarceration, claiming that they were destroyed in accordance with the retention policy. (PCR. 1494-97.)

April 8, 2011, after obtaining more public records, Williams filed a motion for leave to amend along with an amendment to the following pending claims: 1 (public records); 3 (due process claim); 5 (guilt phase *Strickland*); 7 (*Atkins v. Virginia*, 536 U.S. 304 (2002); and 14 (lethal injection) and adding claim 15 (due process) after receiving additional public records. (PCR. 1367-1451). Claims 1[2] and

[2] Williams renewed his challenge to Rule 3.852 and set forth facts demonstrating the DOC's gross delay in producing public records and the failure to retain and/or produce Williams's own records of incarceration. (PCR. 2167-2175.)

14 were amended again on February 6, 2012. (PCR. 2166-2185). On May 18, 2012, the circuit court held a case management conference, and thereafter granted an evidentiary hearing on Williams's penalty phase *Strickland*, *Ake*, and *Atkins* claims. (PCR. 2508-10.)

In preparation for the evidentiary hearing on the *Atkins* claim, Williams submitted an amended demand for public records pursuant to rule 3.852 seeking lethal injection records and an update of his own records of incarceration on February 7, 2012. (PCR. 2342-43). In response, DOC objected to providing "inmate account balances and financial records" arguing that Williams had not established that the records were "relevant to the subject matter of the proceeding." (PCR. 2343.) There was no allegation that it would be burdensome to produce the records sought; DOC simply unilaterally determined that they were not "relevant" to the proceedings.

The circuit court held an evidentiary hearing September 18-25, 2012. (PCR. 3837-5461.) The parties filed post-hearing memoranda on November 26, 2012. (PCR. 2673-2740.) The circuit court held argument on the motion on December 3, 2012. (PCR. 5463-5531.)

On May 10, 2013, the circuit court issued an order denying relief (PCR. 2837-2925.) The motion for rehearing was denied on June 18, 2013. (PCR. 2926-38; 2939-41.) Williams timely filed a Notice of Appeal on July 15, 2013 (PCR. 2942-43.) This

appeal follows.

STATEMENT OF FACTS

A. The first trial.

The Honorable Judge Sheldon Shapiro appointed attorney Bruce Raticoff to represent Ronnie Williams on May 20, 1996 after the public defender's office withdrew. (1996 T. 37-40.) Raticoff repeatedly came to court with excuses about why he was not ready for trial, but his reasons had little to do with preparing the case. After a few more continuances, the court's patience began to wear thin, which was clear on May 8, 1995, when Judge Schapiro announced, "Come hell or high water we're going and I want all pre-trial motions set down and heard prior to that date or they're going to be waived." (1996 T. 118-22.) Several months later, on October 18, 1995, Raticoff requested yet another continuance so that he could obtain a "confidential evaluation" on behalf of his client to explore both competency and sanity. (1996 T. 290-304.)

On February 20, 1996, another lawyer, with no connection to the case, made an appearance in court to tell the judge that Raticoff was in the hospital. (1996 T. 315, 321.) Raticoff had been diagnosed with bipolar disorder. (1996 T. 322-32.) Shortly thereafter, the trial began and Williams was convicted as charged. The penalty phase began on July 1, 1996 and the trial court followed the jury's 11-1 death recommendation. (1996 T. 2439, 2467-74.)

This Court reversed the conviction and sentence based on a jury issue and remanded for a new trial. *Williams v. State*, 792 So. 2d 1207 (Fla. 2001).

B. The 2004 retrial.

Law partners Evan Baron and Hale Schantz were appointed on September 26, 2001 to represent Williams. (PCR. 5593, DE 3.) They split the work, so that Baron would handle the guilt phase and Schantz, the penalty phase. With respect to the division of labor, Schantz did not ask Baron to do "anything in terms of the penalty phase whatsoever." (PCR. 4163-68.) Schantz did not think he had much to work with because he believed that "Williams had been in prison for most of his life." (PCR. 4163-68.) Schantz's mitigation strategy was to do "everything that [he] could think of to show that Ronnie is a nice person and he's worthy of a life sentence." (PCR 4190.) Schantz asked the court to appoint psychologist Dr. Michael Walczak to interview Williams and develop mitigation evidence. (PCR. 6203-13, DE 41.) He also hired investigator Sandy Sticco to do some initial investigation.

Sticco is a former probation and parole officer who had experience preparing Pre-Sentence Investigation (PSI) reports for offenders. She has also worked on a clemency investigation on a capital case for the parole commission. (PCR. 4872-79.) Schantz asked her to do "anything and everything [she] could think of to save Williams's life," but did not give her any further instructions. (PCR. 4243.) Billing records show that Schantz had one conference with Sticco on February 12, 2002.

(PCR. 5634-36, DE 10.) Sticco pulled Williams's criminal history and saw that he was placed on probation for a lewd and lascivious charge on October 28, 1982 and that probation was revoked on July 1, 1985 which is the first time he went to prison. (PCR. 4879-85.) He would have been twenty-four years old at the time. Sticco was able to gather **some** of the DOC records of incarceration but did not get medical or psychiatric records. (PCR. 4909-11.)

Sticco also tried to get Williams's medical and psychiatric records from Fifth Street Counseling, Broward General Hospital, and the Henderson Clinic but was not successful. She did not recall obtaining the 1996 PSI. (PCR. 4899-4900, 4904-07.) Sticco interviewed Williams in January 2003 but Schantz did not obtain school records until September of 2003 so she never followed up by contacting any teachers. (PCR. 4902-03.) Sticco never tried to obtain social security records so she was not able to verify Williams's work history. (PCR. 4903-04.)

Sticco's boss had provided her with a "confidential forensic assessment" form to use as a guide for mitigation interviews. (PCR. 4879-85, 6159-93, DE 39.) Based on her interview with Williams, Sticco learned that he had been born in Pahokee, Florida. She also obtained information that Williams suffered head injuries as a boy. (PCR. 6159-93, DE 39.) Williams described his later upbringing as middle class, they lived in an older home that was clean and neat. Nevertheless, Williams disclosed to her that he had been physically abused by his stepfather, Beamon

Lawrence, who was an active alcoholic during Williams's youth. Beamon would push Clinita around as well. (PCR. 4885-89.) Williams also reported that he felt abandoned and isolated after his cousin, Michael, was killed. (PCR. 4896-99.) Sticco was able to confirm a history of domestic violence through the client's childhood friend, Arthur Lewis, but he was reluctant to give details. (PCR. 4891.)

Sticco also discovered that Williams had been sexually abused by a much older aunt when he was eight or nine years old. (PCR. 4891-92.) Although she attempted to locate the aunt, she learned that the family no longer had contact with her, and her attempts to find the woman were unsuccessful. (PCR. 4893.) Based upon Sticco's experience as a probation officer, she believed Williams was sincere and that it was important for Schantz to have his psychologist follow up, and she told him so. (PCR. 4914-15.) To her knowledge, he never did. When she discussed her findings with Schantz, he impatiently told her that the psychologist, Dr. Walczak, had already interviewed Williams. (PCR. 4933.) Schantz did not think it was a priority. (PCR. 4891.) Sticco attempted to contact Dr. Walczak several times, to ask him to re-interview Williams based on the new information she had discovered. After several unreturned telephone messages, Schantz finally had to intervene and tell Dr. Walczak to return her calls. When he finally called her back, he "blew her off." (PCR. 4913.) Sticco described the phone call as a "five-second conversation.

(PCR. 4933-35.) Schantz never asked Sticco to follow up on any of this information (PCR. 4940.)

Prior to trial, Dr. Michael Walczak interviewed Williams at the county jail to obtain information regarding mitigation; however, the only documents that Dr. Walczak had was the arrest report and other documents relating to the 1993 homicide, along with medical records from the county jail. Dr. Walczak was not aware when he conducted the interview that Williams had served eight years in prison for a prior murder. Schantz did not provide him with school records or any other documentation regarding Williams's life, including records from prior incarcerations or his employment history before the interview. Dr. Walczak did not know about the sexual abuse allegations. (PCR. 4280).

Schantz failed to obtain Williams's school records until a month before the penalty phase was originally scheduled to begin on November 3, 2003, because he claimed they were "not easy records to get." (PCR. 4200-01.) However, the release of information he obtained was dated September 30, 2003. (PCR. 6195, DE 40.) The records revealed that 1973, when Williams was eleven or twelve, he was given the Peabody vocabulary test and scored a 61, which was less than the first percentile and he achieved a score of 73 on the Slosson IQ test. At about the same time, he was given a Wide Range Achievement Test (WRAT), which is a test of academic ability, and he scored a 3.9 grade equivalent in arithmetic and a 4.1 grade equivalent in

reading. (PCR. 3925, DE 40.) Schantz did not mail the school records to Dr. Walczak until September 30, 2003 and they never discussed the contents. (PCR. 4202.) Schantz did not ask Dr. Walczak about Williams's educational background at trial because Dr. Walczak "didn't tell [him] that was a consideration factor." (PCR. 4257.) Schantz knew that cognitive impairment can be a mitigating factor in a capital case.

Evan Baron had to contend with the identifying evidence left at the crime scene by their client that included DNA, bite marks, and fingerprints. There was also a dying declaration because the victim lived for several weeks before dying of a secondary infection in the hospital. The evidence against their client was strong so Baron's number one concern was the use of the prior murder of Gaynell Jeffery as an aggravator. If Baron had known there was a record showing an IQ score of 61 he would have followed up on that information because the case was tried two years after *Atkins* came out. However, he does not recall having ever seen the school records even if Schantz had them. (PCR. 5117-18.) The defense theory at both the guilt and penalty phase was based on voluntary intoxication. (PCR. 1281-82.) Even though they divided the work, they needed to share information since the theory in both phases was the same. (PCR. 5113-17.)

The penalty phase took place on March 1, 2004. This Court summarized the defense's penalty phase case:

The defense presented the testimony of six witnesses at the penalty phase. Arthur Lewis, a lifetime friend of Williams, testified that Williams had difficulty while growing up because of his small stature. According to Lewis, Williams was constantly attacked by the other schoolchildren (earning him the name 'the punching bag'), had money taken from him, and was accused of things he did not do. Dorothea Simmons, who counsels individuals in religion, testified that when she counseled Williams in January 1993, she suspected he was on drugs because she had difficulty obtaining his attention.

Carter Powell, a corrections deputy with the Broward County Jail, testified that Williams was a model inmate with no disciplinary problems who attended religious services at the jail once a week. Corrections Officer Herman Ruise testified that while incarcerated in the Department of Corrections, Williams was a model prisoner, he was never involved in trouble, and he had amicable relationships with the other inmates.

Williams's sister, Clinita Lawrence, testified that Williams's mother died in childbirth when Williams was seven years old, and that Williams's father was never involved in his life. After his mother's death, Williams went to live with Clinita, who was nineteen years old at the time. Clinita had four other children in her care, one of which was her own child. Clinita stated that she was unable to obtain benefits for the children because she did not have the necessary paperwork to make proper application. For approximately three months, Clinita and the children lived in an abandoned car, and they had to cover themselves with plastic when it rained because the car did not have a roof. Clinita testified that Williams did not do well in school, did not start first grade until he was ten years old, and did not finish high school. She stated that the other children often beat him up and teased him about not having a mother and father. Clinita testified that Williams is 'the closest brother that anyone could ever have,' and she loves him and depends on him.

> Finally, psychologist Dr. Michael Walczak testified concerning Williams's extremely troubled childhood, and concluded that Williams lacked the necessary parental role models to teach him right from wrong. Dr. Walczak concluded that the daily beatings that Williams suffered at the hands of other children were the source of his anger and hostility. Dr. Walczak noted that Williams started using alcohol around the age of eighteen and started using crack cocaine around age twenty. He testified that Williams held a series of jobs, but was fired from them for stealing money to buy drugs. Dr. Walczak opined that it is possible for an individual who consumed ten or fifteen rocks of crack and a fifth of alcohol to have a blackout and to have his or her memory affected. Dr. Walczak ultimately concluded that, at the time of the stabbing, Williams was under the influence of a significant amount of intoxicants and was unable to function normally. He further opined that Williams's capacity to appreciate the criminality of his conduct was substantially impaired in that Williams had no recollection of the stabbing.

Williams v. State, 967 So. 2d at 745-46.

The record reflects that the jury began deliberations at 3:45 in the afternoon. The jurors went to the jury room, got settled, and presumably took a vote with little to no discussion. Less than fifteen minutes later, at 3:58 p.m., the court was notified that the jurors had reached a decision. The jury recommended the death penalty by a vote of 10-2. (T. 1713-1719.)

On April 6, 2004, Hale Schantz submitted a "mitigation memorandum" which constituted a three and a half page list of possible statutory and non-statutory mitigating factors. (PCR. 6215-18, DE 42.) On April 16, 2004, Judge Shapiro found

that the State proved that Williams had previously been convicted of a felony involving a threat of violence based on a prior indecent assault of a minor and the court found that "cuts inside the victim's vagina were made by the Defendant's long fingernails." (R. 415-16.) The aggravator was also based upon the 1985 second degree murder conviction. The trial court further found that the capital felony was committed while in the commission of attempting to commit a sexual battery, that the crime was heinous, atrocious and cruel, and that it was cold, calculated, and premeditated. (R. 416.) In sentencing Williams to death, the trial court was especially struck by the similarities between the prior murder of Gaynell Jeffrey and the murder of Lisa Dyke. (R. 419-421.)

The trial court found that the statutory mental health mitigators applied but assigned them little weight noting that the jury rejected the voluntary intoxication defense. (R. 423-425). The court also found that non-statutory mitigation evidence was present including evidence that Williams was a model prisoner, that he has attended religious services, that he had a deprived childhood (lack of a mother and father, poverty, late start in school, and difficulty finding work as a young adult), that he is a loving family member, and that he was slight in stature and frequently bullied. But, these non-statutory mitigators were only assigned slight weight because the trial court did not find a nexus between Williams's childhood and the crime, and

because his sister was "subject to many of the adversities thrust upon" Williams and she managed to become "a productive member of society." (R. 426.)

C. Public records litigation and investigation.

During the course of the collateral investigation, postconviction counsel obtained documents that were available at the time of the investigation and preparation for the retrial but were not in trial counsel's file. For example, Heather Barrow, an experienced investigator and mitigation specialist routinely prepares multi-generational social histories in capital cases. Barrow learned that cousin Dell Foster lived in a nursing home in Belle Glade and that she receives disability payments for what may be an intellectual disability. Foster signed a release of information which Barrow then used to obtain social security records confirming that Foster receives benefits and that her diagnosis is intellectual disability. (PCR. 1289-1300, 6619-20, DE 68). As part of the social history, school records of close relatives such as Geraldine Williams, Clinita Lawrence, and Anthony Bowen were collected in order to determine whether the origin of cognitive deficits had a genetic component. Jail records for Williams's brother, Claire Anthony Bowen, were also secured. (PCR. 6451-51.)

Upon request, Clinitia Lawrence provided copies of old family photographs depicting Ronnie Williams when he was growing up. (PCR. 6596-6608, DE 60-66.) Clinita also turned over records from the memorial service for her son and Ronnie

Williams's cousin, Michael Lawrence. (PCR. 6575-80, DE 58.) She also provided a copy of their mother's death certificate. (4447-49, DE 49.) No one ever asked her for these kinds of documents for the trials. (PCR. 5064-66.)

Postconviction counsel obtained a copy of William's social security records, which established that Williams was only did menial labor. (PCR. 6441-49, DE 48.) Schantz knew at the time of retrial that employment history could be important evidence to present, but he did not obtain the records because he "did not think of it." (PCR. 4192.) Additionally, a copy of Williams's birth certificate establishes his birth date as June 13, 1961, which was important to determine Williams's age when he started school, as well as other developmental milestones. (PCR. 4447-49, DE 48.) Shantz did not think birth records would be relevant so he did not seek to obtain them. (PCR. 4277-79.)

Postconviction counsel also obtained a copy of the 1996 confidential pre-sentence investigation report (PSI) that trial counsel had not seen prior to the 2004 retrial. (PCR. 4186-88, 6236-45, DE 44.) The PSI shows a date of birth of June 13, 1962 and provides a summary of the Williams's criminal history. According to the record, Williams first went to prison in 1985 when he would have been 23 years old. He was released from prison on May 1, 1992. The socioeconomic history indicates that Williams had no training or vocation skills, and that he last worked detailing

cars. Williams relied on family as his primary means of subsistence. Clinita verified that he lived with her from 1969 through 1985 and again from 1992 until 1993.

According to the family history as self-reported and substantially verified[3] by Clinita Lawrence, Williams's father, Lonnie Williams, died of a heart attack and his mother, Kate Bowens died giving birth to Williams's younger sister, Althamese Jones, in 1968. Jones was 29 years old in 1996 and she worked as a social worker in Ft. Myers, Florida. Williams had a brother, Clair Anthony Bowen ("Anthony"), who was 40 at the time the PSI was prepared and he lived in Indiana. Clinita told the DOC probation officer that "Anthony Bowen is in and out of psychiatric hospitals, homeless and a drug addict." (PCR. 6241.)

Upon the receipt of a release of confidential information, DOC provided postconviction counsel with some of his medical and psychiatric records that trial counsel had not obtained. (PCR. 4222-34, 5746-6127, 6277-53, DE 28, 39, 30, 31, 32, 33, 46.) The confidential psychiatric records that were not in trial counsel's files indicated that Williams complained to a DOC employee about a preoccupation with sexual matters and revealed a history of sexual abuse. (PCR. 6285, DE 46.) The confidential medical records indicate that Williams had a chronic heart murmur. (PCR. 5923-69, DE 31.) An Educational and Vocational Counselor's Report dated

[3] Williams reported that he was born in Fort Lauderdale but Clinita clarified that he was born in Pahokee.

July 16, 1985 indicates that Williams was given a BETA IQ test in prison and his score was 76. Williams was 23 years old when the DOC testing was administered and his reading comprehension was at a 7th grade level. (PCR. 5792, 5823-5840, DE 28, 29.)

During public records litigation, postconviction counsel obtained a copy of the 1984 depostion of Dr. Glen Caddy taken in connection with the murder of Gaynell Jeffrey. Caddy. (PCR. 6247-75, DE 45.) Schantz never saw the deposition transcript prior to the 2004 retrial. Upon the receipt of a release of confidential information during the collateral investigation, the State provided counsel with Dr. Caddy's confidential report on the psychological evaluation that was conducted at the behest of attorney Jeffery Harris in the course of his representation of Williams on the 1984 murder case. (PCR. 6582-6594.) Shantz did not obtain Harris's trial file because he "had no reason" to get it as he knew that Williams was already convicted of those charges. He did not get the entire file regarding that prior murder from the State either. (PCR. 4284-87.) Baron was aware that defense counsel is obligated to obtain information concerning prior convictions. He did not recall getting Jeff Harris's files but he did speak to him at some point. (PCR. 5113-17.) Baron did not speak to Dr. Caddy or get a release from him for the State's confidential files. He never saw Dr. Caddy's report prior to trial, nor did he have it in his file. He would have wanted to know about the competency evaluation and he would have followed

up on the prior recommendation for a neurological testing if he had seen Dr. Caddy's report. (PCR. 5118-20.)

Dr. Caddy's February 5, 1984 report and recommendations were based on a clinical interview, collateral family interviews, the administration of the Rorschach and the Thematic Apperception Test (TAT). (PCR. 6582-6594, DE 59.) The report states that Williams was 22 years old and living with Althamese Bowen, age 17, Michael Lawrence, age 15, Beamon Lawrence Jr., age 16, and Kevious King, age 20. The report also indicated that the older brother, Anthony, was living in Indiana. Williams revealed that he had run away from home while growing up to get away from his step-father, Beamon, due his behavior when drinking. Williams admitted that he had prior psychological treatment at the Henderson Clinic in Ft. Lauderdale and his therapist was Dr. Dennis Day. He was given medication but the prescription was never filled. (PCR. 6583-85, DE 59.) Dr. Caddy wrote that Williams reported that he suffered from recurring nightmares where he was hanging from a tree. Williams also reported a serious head injury at the age of ten when he was hit with a baseball bat. Dr. Caddy also interviewed Clinita and Beamon Lawrence who admitted that Williams was immature and "slower." (PCR. 6588.)

The responses on the tests reflect that Williams could not provide "future oriented responses" and that his "thinking is essentially concrete in nature and suggestive of a limited ability to anticipate, plan, or engage in behaviors that will

serve his best interest. (PCR. 6590, DE 59.) "The constricted, concrete, emotionally devoid pattern of responses to his TAT continued on the Rorschach." (PCR. 6590, DE 59.) Dr. Caddy guessed that Williams's intellectual abilities would be within the "low average to borderline range of intelligence." (PCR. 6591, DE 59.) Dr. Caddy recommended a neurological work-up because of the history of head trauma. (PCR. 6587, DE 59.) Regarding sanity at the time of the 1984 murder, Williams was "functioning with a severely diminished capacity to use appropriate judgment and actions under an extremely stressful situation." (PCR. 6593, DE 59.) With regard to competency, Dr. Caddy was of the opinion that Williams did not understand the consequences of a conviction on the murder charge or the impact it could have on his life. (PCR. 6592, DE 59.) A further concern was that Williams did not "understand the adversary nature of the legal process." (PCR. 6592, DE 59.)

D. Evidence presented at the postconviction evidentiary hearing.

Clinita Childress Lawrence testified in 2012 about the family's history and young Ronnie Williams's life from conception until the time that his mother died in childbirth when he was just six years old.[4] Clinita is the daughter of Kate Childress Bowen, born in Pahokee, Florida on February 13, 1945. Kate Bowen moved to Miami when Clinita was still a baby, and that is where Kate met a boxer named

[4] Williams obviously was not in prison during this time period but the jury did not hear about this part of his life.

Ralph Bowen. They married and moved north to Mount Dora where Kate gave birth to Anthony Bowen and another child who died. (PCR. 4945-48.) Young Clinita wore nice clothes because her mother was a seamstress, and she did well in school. Clinita had a first cousin, Patricia Johnson, who would come to Mount Dora and stay with the Bowen family. Patricia Johnson is the daughter of Doc Eason. Doc Eason was Kate's brother and Clinita's uncle.

Eventually, there was a fire in the house and the Bowen family had to leave the Mount Dora area. (PCR. 4948-50.) The family stayed in Sanford, Florida for a while, where Clinita attended an integrated academy and participated in recitals like any other normal student. She did not consider herself to be poor at that time in her life. (PCR. 4948-50.)

Sometime when Clinita was a young teenager, Kate Bowen took her children and moved back to Pahokee to help her brother, Doc Eason, with his kids. By this time, Ralph Bowen was out of the picture. Uncle Doc Eason had twelve children including Patricia Johnson and Dell Foster. (PCR. 4951-53.) Clinita testified that she was aware of the 1960 CBS documentary called the *Harvest of Shame* narrated by Edward R. Murrow and produced when she and her family were living in Pahokee. Although they were living in the area at the time, Clinita did not witness the film actually being made. She had seen the movie about fifteen years ago and was interested because it was about the place where she lived for a while. She watched it

again before she testified in postconviction. Based on her experience and memory, Clinita testified that movie accurately portrayed living conditions in Pahokee, Florida before and after her little brother, Ronnie Keith, was born. Clinita knows that the movie was a documentary and not a movie; the people portrayed in the documentary were real farmworkers. (PCR. 1126-1144.)

Clinita watched the last seven minutes of the video where the documentary depicted the return of the migrant laborers from the north back to Florida. Clinita explained to the lower court that the migrant workers would travel in a bus from state to state during the harvest season but that her family never did that. Clinita described the workers picking beans and she and her relatives would be paid 50 cents per hamper of beans. (PCR. 4977-82.) When it was cold outside, they would have to pick beans with frost on them and Clinita recalled that it was so cold that she could not feel her hands. Her mother, Kate, sometimes worked in the fields when she was pregnant with Williams. (PCR. 4951-54). The housing depicted in the video is typical of the housing where she lived with her family in both Pahokee and later, nearby Belle Glade. Clinita told the court that not only had conditions **not** improved by the time that baby Ronnie was born but they have not improved to this day. (PCR. 4937-77.)

Kate was forty-two years old when she gave birth to Ronnie Keith Williams in 1961 and she had no prenatal care. Lonnie Williams, known as "Little Lyin'

Lonnie," was Ronnie's dad but he never married Kate Bowen. Lyin' Lonnie was a simple-minded jokester who made extra cash by dancing for coins. Clinita recounted one example of Lyin' Lonnie's basic incompetence: when Kate asked him to go buy milk, he came back with cans of condensed milk and Kate was so exasperated that she marched down to the bar where he was dancing and threw the cans at him. (PCR. 4955-56). Clinita could remember that young Ronnie had a heart problem because she would go with her mother on the bus for treatment. Ronnie was frail, had trouble breathing, and was always tired. Kate was afraid that he might not live. (PCR. 4953-61). The family did not have enough food at this time and they would have to wait in line for soup. (PCR. 4956-58.)

Clinita married a man names Jimmie King and she gave birth to Kevious. She left Kevious with her mother and she and Jimmy left to St. Petersburg for a time. The marriage did not last long and she returned to Pahokee and then the family moved to Belle Glade. When Clinita was 18 or 19 years old, she left the family, including her son, Kevious, and moved to Ft. Lauderdale so she could go to college. On December 25, 1967, her little sister Althamese was born and her mother died on January 5, 1968. (PCR. 4988-91.) Clinita testified that she told the jury at retrial about how, after her mother died, she and her son and little siblings had to live in car. She would leave Althamese with Ronnie Williams because she had no other choice. Williams would help collect bottles and cans when he was only 4 or 5 years old. Eventually she met

and married her husband, Beamon Lawrence. Beamon worked in the construction business so he was able to provide a nice home. However, he would beat the children when they were little. She and Beamon had two children, Beamon, Jr. and Michael, who died when he was a teenager. (PCR. 4193-96.)

The lower court heard from additional family members who could have testified at trial, had they been asked. (PCR. 4870-71.) Williams's older brother, Anthony Bowen, flew from Indiana to testify that when he and his "baby brother" (Williams) were little, they lived "on the muck" which is what they called the soil in Pahokee and Belle Glade. (PCR. 4852.) The family lived in a one-room apartment with no indoor plumbing (PCR. 4851.) They used homemade lye soap to wash the clothes that they would get from Goodwill. (PCR. 4854.) For sustenance, they ate crops from the fields he worked in. This was true even though the vegetables would be sprayed with pesticides so potent that he would get boils and sores on his skin. (PCR. 4855-57, 4870-71.) Anthony and his siblings would eat fish and animals that young Anthony and the other boys would catch. (PCR. 4853.) When the farmers burned the sugar cane fields, the animals that lived in that field would run from the fire. The fields were divided into different sections, and as each section would dry out, the farmers would burn that section of cane in the direction of the wind. Anthony and the other boys would be waiting at the end of the field where the fire was not burning to catch any animals that were trying to escape—rabbits especially. (PCR. 4853-54.) The boys would go from

field to field catching as many rabbits as they could. Anthony would beat the rabbits to death with a stick. Sometimes they would take them into town to sell them, or they would keep some of the animals for their families to eat. (PCR. 4853-54.) Anthony described himself and his siblings as "wild as rabbits." (PCR. 4855.)

Anthony would eventually go down a path that would lead him to trouble with drugs. Anthony was unable to accept the drastic change in his life that his mother's death had caused. He used drugs and his new friends as a way to escape from the tragedy that befell his family. Anthony spent most of his life battling his addiction to drugs, going in and out of mental institutions and jails until he was finally able to get sober. (PCR. 4858.)

Patricia Johnson is Williams's first cousin; Kate Bowen, Williams's mother, was her aunt. Johnson confirmed that young Ronnie Williams spent his formative years in abject poverty: Kate Bowen and the children lived in Shady Corners in Pahokee which were old, rat-infested wooden houses with no private bathrooms. (PCR. 4127-28.) She also testified about Williams's half-sister, Geraldine, who was a "simple-minded person," like her father. (PCR. 4131.) Patricia Johnson's son, Michael, also testified. Michael recalled visiting Ronnie Williams in south Florida on family holidays when they were kids. The children used to make fun of Williams because he was the "weakest link." (PCR. 4140-41.) The Johnsons were never contacted by trial counsel.

Williams also presented the testimony of witnesses who had provided services to him over the course of his life, who were available and would have testified at trial if they had been contacted. Janice O'Loughlin was Williams's high school remedial math teacher—she remembered who he was after so many years because of his smile. She recalled that "[h]e had a smile that went right here and turned up on the ends." (PCR. 4152.) O'Loughlin recalled that Williams was easily influenced by others and he tended to back away or step aside from conflict. (PCR. 4158.)

Lisa Wiley is a mental health specialist who was employed at the Florida Department of Corrections (DOC) for approximately twenty years. In 2000, Williams requested to be called out from his cell for a consultation with Wiley, and reported a preoccupation with sexual matters and that he had a history of sexual abuse. Wiley had no reason to question the veracity of his complaints regarding sexual abuse memories. (PCR. 4779-80.)

Dr. Glenn Caddy is the local psychologist who examined Ronnie Williams in 1984 for competency at the request of attorney Jeffrey Harris. (PCR. 5009-15.) Dr. Caddy is familiar with the Pahokee area and that it is characterized by abject poverty; chronic deprivation often correlates with limitations in intellectual functioning. (PCR. 5024-25.) Dr. Caddy did not do any IQ testing because his role was to examine competency and sanity and not explore mitigation. In his opinion, malingering tests should not be administered when the subject is of low intelligence.

(PCR. 5040-42.) If Shantz had contacted him before trial, he would have told him that Williams was slow or "dull" and would have recommended IQ, neurological testing, and maybe even an MRI. (PCR. 5047-48.)

Dr. Philip Harvey, psychologist and professor in the psychiatry department at the University of Miami School of Medicine, administered tests to Williams on two separate occasions. (PCR. 4037-4124.) In 2008, Dr. Harvey administered the WAIS-III to Williams, and he obtained a full scale estimated IQ of 75.[5] (PCR. 4049.) His verbal score was 78 and his performance score was 76. (PCR. 4056.) Dr. Harvey evaluated Williams again in July 2009 because since his first evaluation of Williams in 2008, the WAIS-III had been updated to the WAIS-IV. On the WAIS-IV, Williams achieved a full scale IQ score of 65. (PCR. 4052.) Dr. Harvey opined that Williams met the psychometric criteria for intellectual disability.

Dr. Thomas Oakland obtained his Ph.D. in psychology from Indiana University and he is a professor at the University of Florida. He has lectured all over the world and published hundreds of peer-reviewed articles on the subjects of intellectual disability, adaptive behavior, educational psychology, and psychological testing instruments. Dr. Oakland designed and developed the ABAS and the ABAS-

[5] Dr. Harvey initially reported a full scale IQ of 74; however, he realized prior to testifying that he had scored the results incorrectly due to an arithmetic error and the actual score was 75. (PCR. 4049.)

II[6] and co-authored the manual instructing clinicians on its use. Of the three scientifically accepted measures, only the ABAS-II is consistent with the standards established by the AAIDD, DSM-IV, and *Atkins*, because it is the only measure that assesses the three domains listed by the AAIDD as well as the ten skill areas listed by the DSM-IV and relied upon by the Supreme Court in *Atkins*. (PCR. 4677-84.)

Dr. Oakland was hired by the defense to evaluate Ronnie Williams after Williams scored in the range of mild ID on the WAIS-III. After a complete evaluation, which included a review of records, prior IQ scores, achievement testing, interviews with Williams and others, as well as the administration of the ABAS-II, Dr. Oakland opined that Ronnie Williams is intellectually disabled based on the clinical definitions and Florida law. (PCR. 4723-24.)

Dr. Marc J. Tassé is a professor in the Department of Psychology and Psychiatry at the Ohio State University and current president of the Association of Americans with Intellectual and Developmental Disabilities ("AAIDD"). (PCR. 3979-4025.) Dr. Tassé is an international expert in the field of intellectual disability/intellectual disability who co-authored the 11th edition of the manual published by the American Association of Intellectual and Developmental Disabilities (AAIDD), *Intellectual Disability: Definition, Classification, and*

[6] *The Adaptive Behavior Assessment System – Second Edition* (ABAS-II; Harrison & Oakland, 2003).

Systems of Supports (hereinafter Manual) and the accompanying *User's Guide*. Dr. Tassé provided the lower court with an overview of the general concepts and definitions regarding intellectual disability.

Additionally, the court heard the testimony of Dr. Joette James, pediatric neuropsychologist, who conducted a battery of neuropsychological tests on Williams at the Union Correctional Institution. (PCR. 3854-3979.) Dr. James routinely works with children and young adults and has testified in federal court in *Atkins* cases. Dr. James explained how both genetics and environment contribute to an individual's brain development beginning at birth and how that process can impact the behavior of an adult:

> Q. If you could tell the Court about the stages of brain development, just briefly.
>
> A. Sure. So neurons are the core of the raw matter or raw material of the brain. So neurons are cells and these cells communicate with each other through electrical and chemicals [sic] means. Electrical and chemical means and information is transmitted electrically and chemically from one neuron to another through the branches of the neuron.
>
> You can think of, like I said, the neuron is like the raw material of the brain and we have billions upon billions of neurons. These are all present. **Almost all of them are present at birth. However, the connection between themselves are not at all present and need to be developed.**
>
> What we know about brain development is that a three year old has a brain that's about twice as active as an adult,

> because of this process of development and that the brain itself actually doubles in weight in the first year of life.
>
> The electrical signals that the brain sends to these neurons they send rom one neuron to the other are helped in transmission by what is called a "mylean [sic] sheath." **A mylean [sic] sheath is a fatty substance that covers the neuron cells and allows the transmission of electrical impulses to occur more efficiently. That is part of the development. That also happens in the early years of life.**
>
> You can think of the brain a little bit like a house. That at birth it has the walls, it has the roof, it has the immediate structure, but it's lacking in connections and you can go to the store and you can buy all of the connections. You can buy the wiring, the switches and the fuse box, those connections actually have to be put together and over a period of time we know that there is in the first few years of life a rapid growth in these connections.
>
> Q: How are these connections developed?
>
> A: Those connections are developed through the genetic development of the person. When someone comes into this world as far as their genetic influences that makes them vulnerable or not vulnerable to different kinds of learning experiences.
>
> And then the second piece is really what we call the environment. The influences of the environment and these environmental influences also impact those early experiences of life. They impact the growth and the development of the brain as well.

(PCR. 3861-63.) (emphasis added).

Dr. James conducted a series of neuropsychological tests to determine whether Williams suffers from cognitive deficits and the extent to which those

deficits affected his behavior.[7] Dr. James explained that neuropsychological testing can help understand how damage to the brain can influence a person's behavior:

> So you can take a neuropsychological test as a bridge between understanding processes at the neuro or at the brain level and behavior in terms of what people see outwardly.
> For example, seeing someone being impulsive, or understanding or comprehending language, or having difficulty making decision, or difficulty doing multi-step tasks, those are all of the behaviors that you see and then there are brain processes that account for those behaviors. The neuropsychologist is the bridge, the middle piece of that to assess different areas of the neuropsychological functioning such as language, memory, executive functioning, academic skills to help understand how a damaged brain can influence behavior.

(PCR. 3859-61.)

Dr. James's testing revealed that Williams suffers from pronounced deficits, particularly with respect to his executive functioning which includes "the ability to control impulses, your ability to be flexible with problems to solve easily in different situations or when difficulties come up when you are problem solving you are able to use an alternative solution." (PCR. 3859-61.) Although he was able to score up to the 50th percentile on one subtest, he scored very poorly on others, achieving only

[7] Dr. James conducted the following tests: Delis-Kaplan Executive Functioning System (D-KEFS), California Verbal Learning Test (CVLT), Boston Naming Test, Wechsler Memory Scale, fourth edition, Wisconsin Card Sort, Rey-Osterrieth Complex Figure, Wide Range Achievement Test, fourth edition (WRAT-4), and the Beck Depression and Anxiety Inventories. (PCR. 3873-74.)

the 5th percentile on a test of problem-solving and organizational skills, and below the 1st percentile on another, when he simply could not generate a strategy to complete the task, despite prolonged effort. (PCR. 3880-81.) Dr. James explained that the brain is "like a file cabinet of information. And if the files are in there and they are in alphabetical order, they are able to retrieve. If the files are there, but they're out of order it's more frustrating. It takes longer for the information to be retrieved and that is the case with Williams." (PCR. 3880.) He also struggled with working memory, which implicates primarily the frontal lobe of the brain. (PCR. 3890.)

Dr. James corroborated the test results with a review of Williams's school records. Williams started first grade when he was nearly eight years old but he still struggled, even though most first graders are six years old. (PCR. 3919.) She noted that "his core academic subjects: reading, writing, spelling, social studies were all N's, which means needs improvement." (PCR. 3919.) Although the principal placed him in the second grade, he continued to struggle, and was retained in the second grade:

> A. [I]t's significant, because the demands in the early grades from my experience, first and second grades, those academic demands are not reversed [sic] at that point and it's a red flag for me in looking at the records when I see individuals who are performing below age expectations academically at an early age in those grades.
>
> Q. What does that indicate to you when they are

performing below age expectations?

A. That the individual has learning problems.

(PCR. 3921-22.) Williams's early learning problems corresponded with the cognitive deficits Dr. James discovered through neuropsychological testing she conducted, indicating that his cognitive and learning problems were developmental in nature. (PCR. 3918.)

Dr. James also reviewed affidavits from Williams's former teachers, all of whom were available and would have testified at Williams's trial, had they been asked. One of them was surprised that Williams's first language was English, because of his difficulty with language and communication. Another stated that he was in a general math class, for those with learning problems that would have had difficulty managing at a higher level. (PCR. 3927-28.) Because genetics are an important aspect of understanding a person's cognitive profile, she also reviewed records of Williams's half-sister Geraldine, who was also retained three times in school, as well as records that revealed that Williams's cousin received social security payments because she has intellectual disability. Even his aunt, Clinita, who managed to graduate from junior college, struggled, withdrawing from eight or nine classes, and graduating with a C average. (PCR. 3928.)

Dr. James's findings were consistent with those of Dr. George Woods, a neuropsychiatrist who evaluated Williams for cognitive and physical impairments

for mitigation. Dr. Woods explained that neuropsychology is the tool that neuropsychiatrists, like himself, use evaluate brain functioning. Neuropsychiatry focuses on the central nervous system. (PCR. 4385-94.) Dr. Woods's evaluation of Williams revealed impairments in language, academics, memory, and midline neurological functioning. (PCR. 4436.) It was because of these particular deficits that Dr. Woods suggested further neuropsychological testing, which Dr. James performed. (PCR. 4441.) Dr. Woods also testified that his test results were consistent with intellectual disability. (PCR. 4445.)

Dr. Woods explained that the risk factors for cognitive impairment and intellectual disabilities include care, parenting, and safety, and that often, children with special needs can have difficulties that are not necessarily shared by other family members:

> Q. What do you make that Clinita managed to get some degree of education and live a stable life and Williams had been in prison his whole life, what is going on there?
>
> A. It's what you see in families typically who have a child with special needs.
>
> Q. Okay.
>
> A. We don't know what it is that caused the cognitive impairments in Williams, but it was clear that it happened when he was very, very young in his life. It was clear that it created a different brain than the brain of his sisters who had that resistance and did well.

(PCR. 4452-53.) Additionally, Dr. Woods explained that Clinita and Althamese,

whose lives were relatively stable, had different fathers than Williams, whereas Anthony Bowen, Williams's brother from the same father, also had a difficult life, including psychiatric problems, drug and alcohol addiction, and a criminal history. (PCR. 4453.)

Another important piece of mitigation evidence that was never presented to Williams's jury is that "one of the major issues in Williams' type of impairment is that people who have these types of cognitive impairments do not learn from mistake and experience." (PCR. 4493.) Additionally, Williams's test results indicated that "he was significantly unable to inhibit his impulses." (PCR. 4494-95.) Dr. Woods also opined that the statutory mitigator of extreme mental or emotional disturbance was met, because "Williams's brain issue is not like bipolar disorder or depression or a psychiatric disorder that might be more significant and less significant . . . the problem, in my opinion, is that would lead to extreme mental disturbances. It is always there. So therefore they would have been there at the time of the offense as well." (PCR. 4496.)

Dr. Woods also explained that mentally disabled people are more likely to be caught when they commit crimes, more likely to acquiesce to police, and more likely to acquiesce to their lawyers. (PCR. 4489.) In fact, Dr. Woods characterized acquiescence and gullibility as "hallmarks of intellectual disability," "perhaps more so than [] IQ." (PCR. 4521.) He continued that "[a]cquiescence can be directly

related to certain types of interrogation techniques." (PCR. 4521.)

The State called one witness at the postconviction hearing: Dr. Gregory Prichard, who had been appointed at the State's request to evaluate Williams for ID. Dr. Prichard did not conduct any evaluation as to mitigation, cognitive deficits, or learning disabilities. Dr. Prichard did not bother to talk to the prosecutors after being appointed and before traveling to the prison so he did not know that the WAIS-IV had been administered in 2009. (PCR. 5347-50.) Dr. Prichard did not administer an IQ test, or any other objective test such as an achievement test when he saw Williams at the prison. He did not conduct collateral interviews or attempt any assessment of adaptive behavior. Rather, he called some workers at the Agency for Persons with Disabilities and found out that none of them had personal experience where an intellectually disabled person obtained a GED. Therefore, he concluded that Williams cannot be ID.

Dr. Prichard did agree that a person who is intellectually disabled can still be executed in Florida. (PCR. 5357-59.)

STANDARD OF REVIEW

The standard of review for a trial court's ruling on an ineffectiveness claim is two-pronged: The appellate court must defer to the trial court's findings on factual issues but must review the court's ultimate conclusions on the deficiency and prejudice prongs de novo. *Bruno v. State*, 807 So. 2d 55, 61-62 (Fla. 2001).

ARGUMENT I

WILLIAMS RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE OF HIS TRIAL IN VIOLATION THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

A. Deficient performance.

At the start of the evidentiary hearing on September 18, 2012, the State gave an opening argument regarding Williams's claims. The prosecutor represented:

> This is the third time that the defendant has been in felony court in this county. In 1982 he pled guilty to a lewd and lascivious charge. . . . He violated that probation in 1984 by the murder of another young woman who he stabbed to death. That was before Judge Seay and he was sentenced to 17 years in prison. **At no time prior has the defendant's competency been called into question.**
>
> He was released on that sentence shortly and committed this murder also a stabbing of Lisa Dyke who was his girfriend's friend. **Again, the defendant's competency had never been called into question until these postconviction proceedings on his mental health, his intellectual disability state.**[8] Mr. Schantz was appointed as penalty phase counsel at the last trial and the subject of the claim of ineffective assistance that we are here presently on and we expect Mr. Schantz to testify regarding the background information of mitigation that was presented at the penalty phase. **He didn't have a lot to go with, because the defendant had spent most of his adult life since he was 18 years old incarcerated for** various sexual offenses as well as murders.

[8] It is not clear whether the prosecutor knows the difference between legal competency and intellectual disability.

(PCR. 3845-46.)

Despite the misrepresentations by the prosecutor, there actually was a question as to Williams's competency, in the State's own files. Whether due to state misconduct or the ineffective assistance of counsel, trial counsel were not aware that Dr. Glenn Caddy thought that Williams was "dull," that he had previously questioned Williams's competency to stand trial, and that he had recommended a neurological evaluation. (PCR. 5009-5222.) He also would have learned that Williams had been counseled as a teenager and there were reports of head injuries. Schantz did not investigate the prior violent felonies at all: "I had no interested in retrying that case again so the jury can hear in more detail how he killed another woman." (PCR.4284-87.) Schantz knew that Jeff Harris had represented Williams in the 1984 murder but he "had no reason to get Jeff's file." When asked if he knew whether there was mental health information about his client in the 1984 file, Schantz guessed: "I knew he was convicted of murder. So if they had some type of insanity defense, that would have come out." (PCR. 4284-87.) Schantz did not know whether Williams had previously been evaluated by a psychologist. He also admitted that he never bothered to get the entire 1984 murder file from the State Attorney's Office. (PCR. 4284-87.) According to Schantz, there is no reason to get the file on a prior violent felony if the client was convicted. (PCR. 4288-90.) On the other hand, Evan Baron stated that the prior murder was the number one concern as an

aggravator and he was aware the defense counsel is obligated to investigate the prior convictions if they will be uses as aggravators. (PCR. 5227-18.)

In *Rompilla v. Beard,* 545 U.S. 374, 381-82 (2005), the defendant was bored with the idea of mitigation, the family members were unhelpful either because the defendant had spent most of his adult life in custody or because they believed his was innocent, and the mental health experts found "nothing useful" to help in the case. Nevertheless, the United States Supreme Court found trial counsel's performance was deficient due to the failure to investigate the prior crime that would be used as an aggravator:

> **With every effort to view the facts as a defense lawyer would have done at the time, it is difficult to see how counsel could have failed to realize that without examining the readily available file they were seriously compromising their opportunity to respond to a case for aggravation.** The prosecution was going to use the dramatic facts of a similar prior offense, and Rompilla's counsel had a duty to make all reasonable efforts to learn what they could about the offense.

Rompilla, 545 U.S. at 385-86 (emphasis added). The prosecutor is required to disclose to the defense evidence "that is both favorable to the accused and 'material either to guilt or punishment.'" *United States v. Bagley*, 473 U.S. 667, 674 (1985), quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Where either the prosecutor or defense counsel or both fail in their obligations, a new trial is required if confidence is undermined in the outcome. *Smith v. Wainwright*, 799 F.2d 1442 (11th Cir. 1986).

There was no excuse for Shantz's failure to fully investigate the 1984 murder charge. If they had, they would have been alerted to "red flags" regarding Williams intelligence and ability to act in his own best interest. *See Arbelaez v. State*, 898 So. 2d 25, 34 (Fla. 2005).

Defense counsel's responsibilities at the penalty phase include thoroughly investigating the client's background for mitigation purposes. In *Wiggins v. Smith*, 539 U.S. 510 (2002), when defense counsel failed to investigate a client's troubled past, the Supreme Court held that the attorney was ineffective. A reasonable investigation is a crucial prerequisite to the presentation of mitigating evidence. *See State v. Lewis*, 838 So. 2d 1102, 1113 (Fla. 2002) (stating that "the obligation to investigate and prepare for the penalty portion of a capital case cannot be overstated—this is an integral part of a capital case."); *accord Orme v. State*, 896 So. 2d 725, 731 (Fla. 2005).

When Schantz and Baron were appointed to represent Williams on his retrial, they had the benefit of a blueprint of what to do, and what not to do, from the first trial. Not only did they know how the prosecutor tried the case on the first go around, they knew exactly what the trial judge thought about the evidence. Unfortunately for Williams, instead of taking the information as an opportunity to do better, he sat back and let everyone else do his job for him. Schantz intentionally decided not to "know very much about the guilt phase of the case" because he was worried that if

he learned about it, then he would be accused of incompetence later on. (PCR. 4201-04.) Schantz abdicated his responsibility to Clinita Lawrence, Sandy Sticco, Dr. Walczak, and his intellectually disabled client to do the all of the work and he just showed up at the trial. The result was a presentation of mitigation that was as inaccurate as it was incomplete and provided the prosecutor with the chance to use the evidence against Williams.

Hale Schantz failed to do the basics: he never completed a comprehensive investigation into his client's life story. Schantz agreed that a social and family history would include documentation of physical or sexual abuse and that "[a]ny abuse is relevant." (PCR. 4192-94.) When asked if he agreed that he was required to prepare a social history before deciding what kind of case to put on in mitigation, Schantz said that he "spent hours with the family." (PCR. 4190-92.) The strategy was to have Clinita direct the mitigation investigation for him—Schantz apparently had no independent ideas as to what might be helpful to his client and he left it to her to give him anything that might help Williams. Schantz went to the Lawrence home to interview his client's closest family members but he failed to expand his search for anyone who might be able to provide more insight into the family history. As a matter of fact, he never even asked her for documents that she might have in her own possession that would give him leads. Schantz did not know anything about the family tree: he did not know about Dell Foster, Geraldine Mitchell, or Patricia

and Michael Johnson. (PCR. 4270-75.) There was no strategic reason not to talk to other family members and he did not bother to have his investigator find Williams's brother Anthony or sister Althamese. (PCR. 4270-72.)

Schantz made no attempt to get records regarding his client's life before the age of six: he did not obtain his mother's death certificate, or information about the environment in Pahokee, or his client's birth certificate. (PCR. 444-445). The United States Supreme Court has long referred to the ABA Guidelines as "guides to determining what is reasonable." *Wiggins,* 539 U.S. at 524-25; *Strickland v.,* 466 U.S. at 688 (1984). Applicable professional standards are set forth in the ABA Guidelines which provide that investigations into mitigating evidence "should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." *Wiggins*, 539 U.S. at 524. As the *Wiggins* Court further explained, the applicable ABA standards state that "counsel should consider presenting . . . medical history, educational history, employment and training history, **family and social history, prior adult and juvenile correctional experience, and religious and cultural influences**." *Id*. (emphasis in original). In fact, the commentary to ABA Guideline 10.7 on the duty to investigate begins with the moment of conception. ABA Guidelines, p. 82.

The ABA Guidelines notwithstanding, Schantz's categorical opinion is that birth certificates are not relevant. (PCR. 4277-79.) Perhaps if Schantz had obtained the birth certificate, he might have known how old his client was when he started school. When asked why he did not get information about Pahokee, his responded that it was because he "thought it was completely irrelevant of your claim of the soil samples." (PCR. 4776-77.) It seems odd that Schantz's view of the claims raised in the rule 3.851 motion filed in 2007 could provide the reason for his decision not to investigate the place of his client's birth, but that is what he said. It is more likely that he just did not bother to see whether living in what he knew was a "poor migrant town" had any impact on his client. (PCR. 4776-77). "[T]he mere incantation of 'strategy' does not insulate attorney behavior from review." *Hardwick v. Crosby*, 320 F.3d 1127, 1182-86 (11th Cir. 2003).

Schantz claimed that he obtained his clients prison records "which was pretty much his whole adult life." (PCR. 4277-79.) Even if he did not get all the records, he would have had access to them if he sought to obtain them. He agreed that in preparing a social history, it is important to obtain and review records of incarceration for the penalty phase. (PCR. 4234-36.) If he had obtained those records, he would have discovered that Williams scored a 76 on a BETA IQ test, that he had a heart defect, and that his brother also had a troubled history. "Alerted to the school, medical, and prison records that trial counsel never saw,

postconviction counsel found red flags pointing up a need for further testing" which resulted evaluations that established long-standing cognitive impairment and intellectual disability. *Rompilla*, 545 U.S. at 376.

Schantz bragged that he "went to the school board personally and got those 20 or 30 year old records." (PCR. 4191.) The first trial was set to begin November 3, 2003 but Schantz did not bother to get the school records until one month before because they were supposedly "not easy records to get." (PCR. 4200-01.) But when pressed, he could not point to anywhere on his billing record that showed that he tried to get them any sooner and the release of information is dated September 30, 2003. (PCR. 4201-02, 4244.) Common sense dictates that it would not be "easy" to obtain records unless you first have a release of information. Of more concern is that Schantz completely ignored all the red flags concerning William's IQ that should led to an investigation into whether his client was intellectually disabled.

> The failure of [Williams's] attorneys to review his school records and interview school officials about his mental functioning amounts to deficient performance. By neglecting to review [Williams's] school records and instead relying on [Dr. Walczak] to ascertain their import, counsel abdicated their responsibility. As the [Evan Baron] admitted, reading the documents would have raised the potential for a successful claim that *Atkins* barred imposition of a death sentence on Williams.

Winston v. Pearson, 683 F.3d 489, 505 (4th Cir. 2012) (finding that trial counsel's performance was ineffective in failing to investigate a potential *Atkins* claim) (emphasis added).

The United States Supreme Court, in assessing deficient performance in the context of the penalty phase, reiterated that "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Wiggins,* 539 U.S. at 521 (citing *Strickland*, 466 U.S. at 690-91). The lower court never made a finding regarding the reasonableness of trial counsel's pre-trial investigation. Instead, the court focused on the new evidence that was uncovered during postconviction and discounted nearly all of the testimony presented by the mental health experts. Williams agrees that this Court has held that the fact that collateral counsel found a new expert who has presented a "more favorable report." *Wyatt v. State*, 78 So. 3d 512, 533 (Fla. 2011). (PCR. 2908-09.) However, the evaluations conducted during postconviction were done in response to red flags uncovered in the records that would have been available to trial counsel.

The circuit court failed to recognize that the defense mental health evaluations conducted during the course of postconviction were qualitatively different than the

clinical interview conducted by Dr. Walczak.[9] In short, all of the mental health experts conducted some type of objective testing, depending on their individual discipline and their role in the case. Dr. Philip Harvey, psychologist, conducted an initial psychological screening by administering the WAIS-III and other measures of brain functioning. Dr. George Woods, neuropsychiatrist, conducted a comprehensive evaluation for the purpose of mitigation that included a review of all records, interviews, and some tests of brain functioning. Those evaluations led to a question of whether Williams was intellectually disabled. Dr. Thomas Oakland is an expert in ID so he was retained to conduct a full evaluation of adaptive functioning and a review of records and testing. Finally, Dr. Joette James conducted a complete neuropsychological battery to get a better idea of how Williams's brain functions and whether there were areas of strengths and weakness.

The only additional evidence presented at the penalty phase at retrial was the testimony of Dr. Michael Walczak, whose testimony spanned only ten pages of transcript. (PCR. 4204.) Even though Shantz claimed to have had "multiple conversations" the only real conversation reflected in the billing occurred on February 17, 2004, right before the penalty phase and hardly enough time before

[9] The State successfully cross-examined Dr. Walczak about his failure to conduct any type of objective testing at all including testing to see how Williams's deprivation in childhood impacted his later behavior. The State then argued the same in closing. (T. 1658-62, 1684-88.)

trial to conduct additional testing or follow up on any investigation. (PCR. 4254, 4267.) According to the billing records, Dr. Walczak spent a total of eleven hours to do the following: interview the client, meet with the family, review records, and prepare to testify at the penalty phase of a capital murder trial. (PCR. 4255.)

The jury never heard about Williams's academic struggles difficulties or the low IQ scores based on the school records. Schantz blamed this failure on Walczak, because Walczak did not tell him it was a "consideration factor." (PCR. 4255-57.) Schantz is aware that it is his job to know what is considered mitigating under Florida law, not the expert's, and he believes that low IQ would "fit under the catchall." (PCR. 4258.) *Ault v. State*, 53 So. 3d 175, 191-92 (Fla. 2010) ("[L]ow intelligence has been recognized as valid mitigation."). Schantz refused to answer whether he saw any indication in the school records that Williams had a low IQ and instead, admitted that he left the job of deciding the defense strategy up to Dr. Walczak. (PCR. 4258-59.) When directly confronted IQ score of 61 on the Peabody intelligence test—a score which was reflected on the school records that Schantz had at the time of trial—Schantz said he did not know what the Peabody was and he had no recollection of discussing it with Walczak. (PCR. 4259-60.) When pressed, Schantz was able to tell the Court that the average or mean IQ of the population is 100 and he did not think that an IQ of 73 sounded very high. (PCR. 4260-61.) Even though Schantz knew that an IQ of 73 was "not very high," he tried to say that he did not

present evidence of a low IQ during the formative school years because he could not "invent stuff." (PCR. 4263.) It is unclear what it is that Schantz thought had to be invented, particularly in light of *Atkins*, which came down in 2002, two years before Williams's retrial.

Schantz's studied ignorance and lack of preparation meant that he was not able to effectively use the mental health testimony at trial. Schantz recalled that Dr. Walczak thought the death of Michael Lawrence "would affect Ronnie, because they were close" but there was no strategic reason not to present that to the jury. (PCR. 4280-81.) Schantz did not explore "stuff" about sexual abuse because he did not "hear" about it at the time; this was not discussed with Dr. Walczak. (PCR. 4278-79.) Schantz offered as an excuse in hindsight that the information about the prior sexual abuse might not have been helpful if presented to the jury. It is hard to comprehend how the information that Williams was sexually molested when he was little would have been harmful in light of the fact that the jury heard that he had shoved his finger in the vagina of a little girl. But, if there some reasonable theory under which that could have been harmful, Schantz admitted that there was no strategic thought—or any thought—about whether it should or could have been presented to the Court at the *Spencer* hearing. (PCR. 4280.)

At the retrial, the prosecutor crossed Dr. Walczak on the failure to do any psychological testing regarding how Williams's upbringing impacted him. Missing

from the mental health presentation was any discussion or explication regarding Ronnie Williams's academic problems, drug activity, impulsiveness, inability to learn from mistakes, communication difficulties, and impairments that could exacerbate stressful situations. "Counsel in capital cases must explain to the jury why a defendant may have acted as he did—must connect the dots between, on the one hand, a defendant's mental problems, life circumstances, and personal history and, on the other, his commission of the crime in question." *Hooks v. Workman*, 689 F.3d 1148, 1204 (10th Cir. 2012). Hale Schantz's dogged refusal to take responsibility for a complete psychological evaluation—one that included finding and reviewing all relevant records and providing them to the defense expert, was deficient.

Schantz knew that the trial court thought that Clinita's life circumstances were relevant to the consideration of mitigation because he had the 1996 sentencing order which read: "the evidence reflects that they **failed to procedure any effect upon the Defendant relative to** his character, or the record of the circumstances of his murder of Lisa Dyke." (PCR. 5598-13, DE 5.) (emphasis in the original). Schantz failed to learn from the prior trial: he failed to inform the trial court that his client was constitutionally entitled to "particularized consideration of relevant aspects of [his] character and record . . . before the imposition upon him of a sentence of death." *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976). The essential feature of the

penalty phase of a capital trial is that sentencing be individualized "focusing on the particular characteristics of the individual." *Thomas v. Kemp*, 796 F. 2d 1322, 1325 (11th Cir. 1986). The indispensable prerequisite to a reasoned determination of whether a defendant shall live or die is accurate information about a defendant and the crime committed. *Gregg v. Georgia*, 428 U.S. 153, 190 (1976).

Having only one more opportunity to save his client, Hale Schantz submitted a "mitigation memorandum" which was actually just a three and a half page list of possible statutory and non-statutory mitigating factors. The lack of preparation and thought speaks for itself.

B. Prejudice.

In order to obtain a new trial, Williams must show that his attorneys rendered deficient performance and that he was prejudiced by that performance. *Strickland*, 466 U.S. at 687. In its prejudice analysis, this Court must evaluate the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the collateral proceeding—and weigh it against the aggravation, less the invalid CCP aggravator. *Porter v. McCollum*, 558 U.S. 30, 41 (2009); *Williams v. Taylor*, 529 U.S. 362, 397 (2000); *Sochor v. Florida*, 504 U.S. 527, 532 (1992). In denying relief, the lower court repeatedly conflated the deficient performance prong and the prejudice prong, finding with each additional piece of evidence presented in postconviction, trial counsel was not deficient because the introduction of that

evidence would not have mattered. The trial court never considered the entire picture. "The description, details, and depth of abuse in [Williams's] background that were brought to light in the evidentiary hearing in the state collateral proceeding far exceeded what the jury was told." *Cooper v. Sec'y, Dept. of Corr.*, 646 F.3d 1328, 1353 (11th Cir. 2011).

The lower court discounted the compelling testimony of Anthony Bowen and the graphic depiction of the extreme deprivation in Pahokee that was filmed in the documentary, *The Harvest of Shame* by relying on the fact that the trial judge found that Williams grew up in poverty as a mitigating factor. (PCR. 2913.) Of course, the jury only heard about a relatively short period of time when little Ronnie Williams was living in a car with Clinita after their mother tragically died after childbirth. What Schantz did not explore about Williams's early development from conception through the age of about six is important because the experiences of a young child—including living in extreme poverty—can affect cognitive development. (PCR. 3961.) The testimony and evidence was not just that he lived in poverty but how that impacted him, his personality, and his brain.

The trial court either ignored or did not appreciate the uncontroverted evidence about the critical importance of the very first few years of life. Dr. James, a pediatric neuropsychologist, explained that the brain actually doubles in size during an infant's first year of life and during the early years, the myelin sheath

develops, which allows the transmission of electrical impulses to occur more efficiently. The way that the connections in the brain are wired is influenced by genetics and the environment. (PCR. 3862-63.) Dr. Marc Tassé noted that the risk factors for intellectual disabilities may be broken up into the categories of prenatal, perinatal, and postnatal. Postnatal risk factors that may affect cognitive development include head injuries, lead exposure, poor stimulation, poor nutrition, and physical abuse. (PCR. 3997.) Even the State's psychologist agreed that risk factors for cognitive impairment would include a lack of care, lack of stimulation, teenage drug use, head injuries, stress, and, of course, poverty. (PCR. 5366-67.)

Williams presented evidence that his jury never got to consider regarding the presence of numerous risk factors for cognitive impairment that were present during his early childhood. There is no requirement for Williams to prove that any one of the numerous risk factors to which he was exposed actually caused his low IQ or learning disabilities. In fact, the jury needed to only be reasonably convinced that Williams was a special needs child for that particular mitigator to be present. For that reason, even though the lower court did not find that Williams is ID, trial counsel was still obligated to present evidence of ID to the jury.

Reasonably competent counsel would have presented a complete picture to the jury of the person for whom they would recommend a sentence of either life or death. Ronnie Keith Williams was born in 1961 into an environment of "tremendous

disadvantage." (PCR. 1192.) Young Ronnie or "Keith," as he was called as a child, spent his formative years in the impoverished migrant worker town of Pahokee, Florida where he and his brother slept on the floor of a rat-infested, rooming house with no electricity and no indoor plumbing. (PCR. 4125-28.) His father was a "simple-minded" man, small in stature and known in the community as "Little Lyin' Lonnie" who earned extra cash by dancing in the street for coins. (PCR. 4128-30, 4955-56.) Kate Bowen was 42 years old when she gave birth to Ronnie, old by the standards of the day, and she never had prenatal care. From the very beginning, young Ronnie had special needs: born with a parasternal heart murmur, he was always frail and did not have the stamina to run and play with the other children. (PCR. 4405-13.)

Kate Bowen sometimes worked on the farm for money and she would bring little Ronnie with her; the fields were full of fertilizer and "poison." (PCR. 4953-54.) Ronnie's brother Anthony remembered that the pesticides in the "muck" would burn their skin causing boils and sores. (PCR. 4855-57.) Anthony gave a vivid description of the living conditions in Pahokee:

> A burn down is when the sugar mill opened, a guy would have a can, either diesel or gasoline and he lights the top of the can. And by the judging of the wind he would go facing which ever way the wind is blowing. And they would set the bark afire at the bottom, and the wind would catch it and it would just blow and burn all of the leaves off the sugar cane. That's a burn down.

> We would go to the opposite of the field as the sugar cane is burning. We would wait until – if it's not too hot, because whatever is in there is coming to you anyway. But at the same time you had to get out of the way of the flames. So a lot of times a lot of rabbits come out burnt. You know. But they not scorched too bad. And as soon as it's burn out we go and, you know. Hit the rabbits in the head.

(PCR. 4853-54.) Still, the family would eat corn and greens straight from the field.

Kate tragically died shortly after giving birth to Ronnie's little sister, Althamese, leaving Clinita to care for Kevious, Anthony, Ronnie, and baby Althamese in destitution. Clinita and the children were forced to collect bottles and cans to earn money to eat, and had to live in a car with no roof. (PCR. 4991-93.) Eventually, with the help of the church, Clinita slowly got back on her feet, met and married Beamon Lawrence, and enrolled the children in school. Beamon worked overtime in the construction business and Clinita sometimes worked two jobs so they could provide a home and some sense of stability for the children. But it was not enough to help Ronnie overcome his physical limitations and his intellectual disability. School records show that little Ronnie started kindergarten in April of 1969 when he was almost eight years old. By the time he was in third grade, he was considerably older than his peers. Early testing indicated that he had cognitive deficits; when he was 11 or 12 years old, his score on an academic achievement test was the grade equivalent of 3.9. Ronnie persevered through school even though he was stuck in remedial classes such as consumer math—he didn't give up on his

formal education until he was twenty years old.

Family photographs reveal what looked to be a normal, middle class family. (PCR. 6596-6608; D.E. 60, 61, 62, 63.) The children lived in a nice home with a pool and young Ronnie played with drum sets and rode bicycles like any other kid. (PCR. 5056-64.) But despite the semblance of normalcy, his special needs were never even identified, let alone met, by his caretakers. Beamon was a strict disciplinarian who beat the children, and Ronnie was confused by punishments that he experienced as abusive. Clinita was so busy caring for the young children that she often ignored Ronnie. (PCR. 5036.) While there was a venire of happiness during family barbeques or camping trips, Ronnie was always the "weakest link" among his peers, and was tormented by his cousins and the other children in the neighborhood. In addition to the verbal taunting and the constant beatings that he endured at school, Ronnie also fell prey to sexual abuse at the hands of an older aunt. By the time he was in his late teens, he began to use and abuse drugs to deal with all of the trauma.

At age twenty, Williams was hanging around with younger teenagers rather than people his own age. In 1982, he was arrested and charged with lewd assault on a nine-year-old girl and was put on probation. In 1985, when he was twenty-three years old, he was convicted and sentenced to prison for second degree murder; he served only eight years in prison. Upon his release, he went back to the only home

he had ever known: back to live with Clinita and Beamon at the age of thirty. He resumed his old pattern of working at dead-end jobs and depending on his family for support for the next nine months. Ronnie Williams's immaturity was still evident when he began dating Stephanie Lawrence, a young girl nearly half his age. On January 26, 1993, he was arrested and charged with the capital murder of Lisa Dyke.

The evidence presented at the hearing showed that, contrary to the State's misleading argument and the trial court findings, young Ronnie's experiences were vastly different from the experiences of his older sister, Clinita. The State's line of questioning directed at Clinita and the argument to the jury that Ronnie Williams should have "pulled himself up from his bootstraps" was not only intentionally misleading but it was contrary to the information that the prosecutor had in her own files regarding the relative success of Williams's half-brothers, Anthony Bowen and Kevious King. At the evidentiary hearing, the prosecutor demanded to know whether Anthony Bowen knew that Ronnie Keith had been convicted of two murders of young women. Consistent with his history of schizophrenia, Anthony responded with a word salad:

> When a person has a grudge on someone else, you know, sometime they can hide someone in the darkness. But, you know, it's like a pigeon. A pigeon is a person that a person is looking for, say a streetwalker. But then after the pigeon come a flunkie. A flunkie is what a pigeon is looking for. And after the flunkie come a mule. What you know with a mule, you know, it all depends on the area what you looking for. But no I didn't know that.

(PCR. 4867.) Williams was prejudiced by the misleading argument of the State at trial.

Dr. George Woods testified that both statutory and non-statutory mitigation was present based on his collateral interviews, his clinical interview of the client, his review of records, review of testing and opinions by other mental health professionals, and his own testing. (PCR. 4397-4400.) Dr. Woods relied upon the neuropsychological battery of tests administered by Dr. James. The records provided to Dr. Woods are the kind of records that are routinely provided to him by the attorneys in capital cases. (PCR. 4407-09.) The Department of Corrections records document that Ronnie was born with a parasternal heart murmur which is a midline defect. (PCR. 5923-69, DE. 31.) Dr. George Woods explained that the midline is formed during the first three month of fetal development and things such as exposure to toxins or alcohol may impact the fetus during this time. (PCR. 4432-37.) Because of his heart defect, Williams was not able play sports because he did not have physical stamina. (PCR. 4404-07.) Midline defects can also impact the brain. Dr. Woods's examination revealed impairments in language, academics, memory, and midline neurological function. (PCR. 4435-37.)

From the moment of young Ronnie's birth, there was evidence that both genetics and the environment contributed to his special needs. Dr. Woods concurred with Dr. Oakland's diagnosis that Ronnie Williams is intellectually disabled but he

agreed that Williams could have cognitive deficits and not necessarily be intellectually disabled. (PCR. 4642.) Both statutory mental health mitigators were present in this case because Williams' cognitive impairments were lifelong. (PCR. 4642.) In Williams' case, the jury was not given the opportunity to consider the impact of poverty on Williams. As Dr. Woods explained:

> The impact of poverty is specific to nutrition. It's specific to enrichment. The brain has to be enriched as well as fed emotionally as well as physically. And if the poverty impacts health care and when the child's brain is first developing for those four years, those are the most important years. The brain is sprouting. When you try to gather information you're pouring as much into that brain as possible.
>
> At about the age of five or six that brain starts to undergo a process called pruning, which is just like you prune roses. It starts to organize itself into memory domain, language domain, perception domain. If that brain has been – I always think of it as a bonsai. If that brain has been bounded in the way that a bonsai is, those domains can be impacted.

(PCR. 4644.) The jury never heard how Williams's frontal lobe impairments impact his ability to control his impulses, to learn from his mistakes, and to weigh and deliberate when making decisions.[10] (PCR. 4493-4500.) The inability to control his

[10] Williams's tendency toward acquiescence was clearly demonstrated during Dr. Prichard's "evaluation" of Williams, when Dr. Prichard had Williams read aloud a letter that he had purportedly written to a judge in a prior case. Not only did Williams not write the letter in question, but he struggled to read portions of it aloud. (PCR. 6526, DE 53.) At Prichard's request, Williams signed an affidavit stating that he had written the letter, even though, as Dr. Woods pointed out, Williams was not able to

impulses is directly related to the crimes and the rage that he displayed when being rejected. (PCR. 4493-96.) With respect to the aggravating factors, Dr. Woods explained that most capital defendants who commit sexual assault were themselves victims of sexual abuse; thus, the prior lewd act on a child was consistent with Williams' history. (PCR. 4410-22.)

The lower court attempted to discredit some of the mental health testimony presented at the postconviction evidentiary hearing. However, there was no consideration about how a jury might have viewed the testimony provided by the experts. The United States Supreme Court has made it clear that it is not appropriate to "discount entirely the effect that his testimony might have had on the jury." *Porter v. McCollum*, 558 U.S. at 42-43 (2009). Williams was prejudiced and is entitled to a new trial.

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definitively determine whether he had actually written it. (PCR. 4518.)) As Dr. Woods testified, that sort of gullibility and acquiescence are not only indicative of possible intellectual disability. (PCR. 4518.) Consistent with that opinion, Schantz testified that Williams was "the easiest client that [he'd] ever represented for a first degree murder, and that he was "extremely cooperative." (PCR. 4347.)

ARGUMENT II

THE EIGHTH AMENDMENT PROHIBITS WILLIAMS'S EXECUTION BECAUSE HE IS INTELLECTUALLY DISABLED.

Williams has intellectual disability (ID) and is therefore ineligible for execution under the Eighth Amendment to the United States Constitution. *Atkins*, 536 U.S. at 321. The *Atkins* Court left it to the states to enforce the prohibition against the execution of ID defendants. *Id.* at 317. Florida Statutes § 921.137(4) provides that the defendant bears the burden of proof and the standard is clear and convincing evidence. When reviewing determinations of ID, this Court examines the record for whether competent, substantial evidence supports the determination of the trial court. *Dufour v. State*, 69 So. 3d 235, 246 (Fla. 2011). The circuit court's determination that Williams is not ID is not supported by competent, substantial evidence. *Id*.

A. Threshold issue: Dr. Prichard should not have been allowed to testify.

It was an abuse of discretion for the trial court to allow Dr. Prichard to testify as an expert in an *Atkins* hearing because Dr. Prichard is not qualified to render an opinion regarding ID, he did not conduct a proper ID evaluation, and his conclusions are not supported by the evidence. (PCR. 5198-5234). "The demands of expert testimony in *Atkins* [cases] involve an unusual mix of background in the field of developmental disabilities with a background in forensic psychology." Olley, J.

Gregory, *Knowledge and Experience Required for Experts in Atkins Cases*, 16 Applied Neuropsychology 135, 135 (2009). Experts in *Atkins* cases must be familiar with the prevalent definitions of ID and recommendations made by recognized authorities in the field of ID.

Dr. Prichard does not have the requisite background and experience in ID to render an expert opinion in a matter of life or death. At the evidentiary hearing, it became obvious that there are serious questions as to Dr. Prichard's basic education and qualifications. (PCR. 5206-30, SE 5.) Dr. Prichard obtained a masters degree in 1992 and his Psy.D. in 1994 from the Huntsville, Alabama satellite campus of the Forest Institute of Professional Psychology. Rather than undertaking the rigorous coursework associated with a Ph.D. in clinical psychology, Dr. Prichard decided to get a Psy.D. because it does not require as much research. When Dr. Prichard first matriculated, the satellite campus was not yet accredited by the American Psychological Association (APA) although, according to Dr. Prichard, the "entire system" was accredited by the time he graduated. However, the Huntsville campus closed down in 1993 due to financial difficulties. (PCR. 5208-30.) Dr. Prichard is not affiliated with any university, he does not conduct research, and he has never published an article in a peer-reviewed journal.

Dr. Prichard's five-page curriculum vitae states that he is a member of the "AAMR" even though the name of the organization has long since been changed to

the "AAIDD." (PCR. 5206-08, SE 5.) While Dr. Prichard is a member of the APA, he does not belong to Division 33 which is the intellectual and developmental disabilities division, or Division 41, the psychology and the law division. (PCR. 5203-06). He has not taken any continuing legal education courts in the field of ID and has not worked with the ID in a clinical setting since 2001.

Qualification of a witness as an expert, as well as the range of subjects about which the witness will be allowed to testify, are within the trial judge's broad discretion. *Holiday Inns, Inc. v. Shelburne*, 576 So. 2d 322, 335 (Fla. 4th DCA 1991). The circuit court abused its discretion in accepting Dr. Prichard as an expert witness. Any member of the Florida Bar may represent any client in most criminal matters, even if he or she has little to no experience. However, an attorney with general experience in the criminal law may not represent criminal defendants in capital cases whether at trial, or in postconviction. *See* Florida Statutes § 27.704; Florida Rule of Criminal Procedure 3.112. The reason for the special requirements for lawyers is clear: the quality of counsel can mean the difference between life and death. "Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). It is equally important, in the context of an *Atkins* hearing, to ensure that the experts are qualified to render an opinion regarding ID.

The value and quality of Dr. Prichard's expertise can be summed up by his assertion that "you wouldn't expect that a mentally retarded person is . . . capable of carrying out . . . a more complex crime such as murder." (PCR. 5340.) If that were true, there would never be a need for an *Atkins* hearing.

B. Subaverage intellectual functioning.

Florida Rule of Criminal Procedure 3.203(a) defines the "significantly sub-average general intellectual functioning" prong of ID as "performance that is two or more standard deviations from the mean score on a standardized intelligence test authorized by the Department of Children and Family Services (DCF) in rule 65G-4.011 of the Florida Administrative Code." *See also* Florida Statutes § 393.063 (21). One standard deviation is 15 points and the average is 100; therefore, two standard deviations below the mean equals an IQ of approximately 70 or below. (PCR. 4000-01); *see United States v. Davis*, 611 F. Supp. 2d 472, 475 (D. Md. 2009). Both the DSM-IV and the AAIDD recognize that the scores are approximate, but this Court has decided that only those ID individuals whose IQ scores fall at exactly 70 or below are eligible for protection under the Eighth Amendment. (PCR. 4000-01; 5354-57.) *See, e.g., Cherry v. State*, 959 So. 2d 702 (Fla. 2007); *Cf. Hall v. State*, 109 So. 3d 704 (Fla. 2012), *cert granted, Hall v. Florida*, 134 S. Ct. 471 (Oct. 21, 2013).

Dr. Philip Harvey administered the WAIS-III to Williams at Union Correctional Institution on June 12, 2008. (PCR. 4047.) Williams obtained a score of 74, which Dr. Harvey later admitted should have been a 75, as he had made an arithmetic error in adding the score. (PCR. 4049.) Williams's verbal IQ was a 78, and his performance score was a 76, with a full-scale score of 75. (PCR. 4056.)

Between 2008 and 2009, an updated testing instrument, the WAIS-IV, was released. (PCR. 4048.) At the request of defense counsel, Dr. Harvey went back to UCI to administer the WAIS-IV to Williams on July 13, 2009. (PCR. 4046-53.) The WAIS-IV is more than just an update of the WAIS-III based on new norms; rather, it was designed by taking into consideration more advanced theories of intelligence and therefore, it is structured differently from the WAIS-III. (PCR. 5430-33.) Whereas the older WAIS-III produced a verbal IQ as well as a performance IQ in addition to the full scale score, the WAIS-IV has four IQ subscores: verbal comprehension, conceptual reasoning, working memory, and processing speed. (PCR. 4066-68.) Williams obtained a full scale score of 65 on the WAIS-IV, placing him easily in the range of mild ID for prong one. (PCR. 4066-68.) Some of the tests were changed from the WAIS-III to the WAIS-IV, including the Digit Span, which was changed to make it "considerably more difficult." (PCR. 4059.) Dr Harvey explained that "you can't really directly compare a score on WAIS-III and WAIS-

IV and Digit Span on a raw score basis, because the test isn't the same anymore." (PCR. 4060.)

Dr. Thomas Oakland found that Williams meets prong one of the Florida's definition for ID because he achieved a full-scale IQ of 65 on the WAIS-IV. (PCR 4675-76.) Dr. Oakland's findings regarding Williams's academic achievement were consistent with this score. For example, Williams's scores on the Woodcock-Johnson academic achievement test were consistent with mild ID because most of his scores were at the 10-or 11-year-old level. (PCR. 4713-15.) Williams's 65 IQ was also consistent with the information that Dr. Oakland obtained based on his review of Williams's school records. (PCR. 4714-15.)

In support of the finding that Williams is not ID based on his IQ, the trial court stated:

> **Although** Dr. Harvey testified on redirect examination that he did not apply the Flynn effect in order to obtain the full scale IQ score of 65 on the WAIS-IV, **on direct examination** he stated that the "the IQ score of 65 on the WAIS-IV is a result possibly of the Flynn effect, which he defined as a 'description of the fact that the population becomes more intelligent over time.'

(PCR. 2876.) (emphasis added) The foregoing statement regarding Dr. Harvey's explanation for the lower score on the WAIS-IV indicates a misunderstanding of the testimony regarding both the Flynn effect as well as the differences between the construction of the WAIS-III as compared to the WAIS-IV. The implication is that

somehow Dr. Harvey used the Flynn effect in order to get the IQ score down to 65, but that simply is not accurate. There is a vast difference between applying the Flynn effect in an effort to get the IQ score down below 70 to get around Florida's bright-line cut-off, and explaining the relationship or difference between two IQ scores by referring to the known and generally accepted phenomenon which is the Flynn effect. The former application may be prohibited under *Cherry v. State*, 959 So. 2d 702 (Fla. 2007) and *State v. Herring*, 76 So. 3d 891, 893 (Fla. 2011).[11] The latter is a relevant scientific explanation that a court cannot ignore when assessing the validity of the various obtained scores.

During the hearing, Dr. Oakland confirmed that neither the standard error of measurement (SEM) nor the Flynn effect was applied with respect to the score of 65 on the WAIS-IV. (PCR. 4638-42, 4675-76, 4755-59.) Williams has **never** relied on the Flynn effect in asserting his entitlement to relief because it is not necessary. **His full-scale IQ on the WAIS-IV was a 65**.

There is also no record support for the trial court's criticism of Dr. Harvey's initial choice to administer the WAIS-III as opposed to the Stanford-Binet. (PCR. 2880.) The State's psychologist admitted that he could have administered the

[11] "Whether the practice of subtracting points from the obtained full scale IQ score in order to get below 70 is acceptable remains an open question in Florida. However, that is not an issue in this case, as Williams scored a 65 on the WAIS-IV.

Stanford-Binet as well but he chose not to do so; in fact, he conducted no testing whatsoever. (PCR. 5271-74, 5447.)[12] The court's assertion that Dr. Harvey had a concern with the validity of the WAIS-III misconstrues the testimony, evidence, and the generally accepted science. (PCR. 2880.) When Dr. Harvey administered the WAIS-III, it was the currently accepted test by clinicians and the State of Florida for the purpose of evaluating ID. At the time, there was no information on the release date for the WAIS-IV, and the Stanford-Binet is difficult to administer in a prison setting. (PCR. 4096-97, 4101-04.) The State's psychologist explained that the WAIS-IV is a different test than the WAIS-III because it is based on more advanced theories of intelligence. In fact, there is a high correlation—about .8—between scores on the WAIS-III and the WAIS-IV. (PCR. 5430-33; 4099-4100.) Williams has never suggested that the WAIS-III was invalid. To the contrary, when known scientific phenomena such as the standard error of measurement and the Flynn effect are taken into consideration, the scores are so close as to be statistically insignificant. (PCR. 4070-73, 4077.)

The trial court's reliance on the fact that Dr. Harvey admitted errors in either the **scoring** or **transcribing** of the scores on the r-BANS to discount the scores

[12] The trial court commented that Dr. Prichard did not "conduct any intellectual or adaptive behavior testing, because such tests had been recently administered to him by the defense experts." (PCR. 2878.) The truth is that Dr. Prichard did not do his homework before he went to the prison, so he was not prepared to administer the Stanford-Binet.

obtained on the IQ tests is misplaced. (*See* PCR. 2875-76, 2880.) Dr. Harvey was fully cross-examined on his administration and scoring of the IQ tests and while there were minor errors in the scoring on the WAIS-III, it did not change the score. Dr. Prichard had both Dr. Harvey's raw data and the report, and he did not note any concerns in the scoring. In fact, he admitted that he had made similar errors of his own in other cases. Williams does not rely upon the results of the r-BANS to prove that he has either a low IQ or cognitive impairment.

The Court's comment regarding the alleged failure to specify whether the score on the r-BANS would have been consistent with an IQ score of 65, or whether they would support the higher score of 75, again evinces a profound misunderstanding of the significance of a single full-scale IQ score. Florida law allows for the execution of persons with ID by ignoring the standard error of measurement. But there is no such thing as a single magical, correct and "credible" IQ score based on any test that can be administered by any psychologist. "[N]o one IQ score is exact or succinct . . . there's always some variability and some error built in." *Cherry*, 959 So. 2d at 711-12. The interpretation of the score of 75 on the WAIS-III as a "higher" IQ score than the 65 obtained on the WAIS-IV is contrary to the evidence, not only because they were not produced by the same tests, but also because they are so close in terms of statistical significance that is it impossible to say that one score is necessarily "higher" than the other. (PCR. 4077.)

C. Deficits in adaptive functioning.

Williams has established that he has significant deficits in adaptive behavior, and therefore he meets the second prong of Florida's definition of ID. Florida defines the term "adaptive behavior" as "the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community." Fla. Stat. 921.137(1) (2006); *accord* Fla. R. Crim. P. 3203(b). As Dr. Oakland testified, adaptive behavior is the "degree of personal independence and social responsibility displayed by persons relative to their age, their social group and community" and "ability to accept responsibility for themselves, self-initiated behavior, and to meet the needs of others and engage socially with others." (PCR. 4676.)

Thus, by definition, adaptive behavior must be assessed with reference to the community. In other words, adaptive behavior must be evaluated in a context of the opportunity to make choices. There are few choices in prison, particularly on death row. DOC mental health specialist Lisa Wiley testified that death row was similarly restrictive to the inpatient unit where some ID inmates are housed: the inmates are kept in individual cells; their meals are brought to them; and they must be escorted to showers and call-outs. (PCR. 4797-4800.) Leading authorities on ID maintain that it is inappropriate to evaluate an individual's adaptive behavior in a prison setting because of the lack of opportunities to independently display behaviors. By the same

token, the highly structured environment of death row allows somebody who is ID to function better than they would outside of prison.

Dr. Marc Tassé explained that there is a great deal of misperception about how ID people look and behave. The State, for example, made much of the fact that Williams's cell was clean and that he was communicative and well-groomed, as if to suggest that if he were truly ID, he would be dirty and drooling. (PCR. 3993-94.) The truth, however, is that one cannot tell whether a person has mild ID simply by looking at them. (PCR. 3993-94.) For someone with mild ID, the behaviors Williams displayed are far from unusual. Dr. Oakland testified that mildly ID people can (and often do) communicate, converse, express opinions, express pain, display emotions, wash their faces and bodies, brush their teeth, recognize if their clothing is dirty, display self-awareness, write letters, and clean their rooms, among other things. (PCR. 4692-94.) Although Williams displayed many of these behaviors, he was never able to live independently, maintain steady employment, or manage his own finances. (PCR. 4807.)

Dr. Tassé explained that the term "cloak of competence" describes how some ID individuals do not want to appear ID, and so will, for example, answer a question without really understanding it in order to avoid embarrassment. (PCR. 4006-08.) For this reason, the AAIDD advises that "self-ratings have a high risk of error" in determining significant limitations in adaptive behavior—because people with ID

are more likely to "attempt to look more competent and 'normal' than they actually are, as well as frequently exhibit an acquiescence bias." User's Guide at 20.

A proper assessment of adaptive behavior involves a retrospective analysis of the individual prior to age 18. Adaptive behavior is more difficult to quantify when a subject is presently incarcerated. When a court requires an assessment of a defendant's current adaptive behavior, standard approaches are not effective, because prison is "the antithesis of the environment in which adaptive behavior can be displayed." (PCR. 4681.) Just as IQ tests were designed to measure a person's intellectual ability, several standardized instruments have been designed to measure adaptive behavior. The three most commonly used tests are the Adaptive Behavior Assessment System, second edition (ABAS-II), the Vineland Adaptive Behavior Scale, and the Scales of Independent Behavior. (PCR. 4677.) These instruments are designed to be administered to respondents who have extensive knowledge of the subject prior to the age of 18. (PCR. 5369.) Clinical judgment is important to the interpretation of the test scores, but should not be a justification for an abbreviated evaluation, or an excuse for missing or incomplete data. (PCR. 5370.) Adaptive behavior analysis focuses on deficits, not strengths. (PCR. 5367-68.) A subject who displays deficits in at least two domains meets the adaptive deficits prong of the ID diagnosis. *See* Fla. Stat. Ann. 921.137. ID individuals may have deficits in some domains of adaptive behavior yet have skills or strengths in others. It is the deficits—

not the strengths—that are relevant to a diagnosis of ID.

Dr. Oakland chose Clinita Lawrence and Althamese Bowen as respondents, because they knew Williams better than anyone else during the period of time when he was 16-17 years old. Clinita reported that Williams has deficiencies in eight out of nine skill areas: communication, community use, functional academics, home living, health and safety, leisure, self-direction, and social. (PCR. 4696.) Although Dr. Prichard opined that a person with such scores would be a "vegetable," this characterization was not only pejorative but inaccurate. (PCR. 4699.) According to Dr. Oakland, who designed and developed the test, those types of scores are expected of someone who has mild ID. (PCR. 4700.)

In addition to deficits, the respondents also reported that Williams had strengths in various areas, which shows that they were not deliberately exaggerating his deficits for secondary gain. Althamese reported that Williams had deficiencies in three skill areas: functional academics, health and safety, and leisure, which still places him well within the realm of ID. However, she also reported that he did *not* have deficiencies in six of the nine areas. She reported that he was able to perform a number of tasks "almost always when needed," including writing his own first and last names, stating the days of the week in order, telling time correctly, giving a clerk the correct amount of money when purchasing an item, listening to music for fun or relaxation, and playing with toys or other fun items with other people. (PCR. 4703.)

In addition to Clinita and Althamese, Dr. Oakland also had Williams complete an ABAS. Dr. Oakland recognized that it "[i]t's downright silly to try to acquire adaptive behavior information on persons who are incarcerated under [such restrictive] conditions." (PCR. 4708.) He explained that it was "silly" because "[w]ithin a prison setting the people of course are highly restricted as to the behaviors that they can display, and therefore we are not going to get an accurate assessment of adaptive behavior by . . . acquiring information on prison related behaviors." (PCR. 4681.) The only reason he had Williams complete an ABAS at all is to comply with Florida law. (PCR. 4708.) *See* Fla. Stat. Ann. 921.137(1).

Experts in ID agree that **one cannot measure adaptive behavior based on how a person behaves in prison**. (PCR. 4007-08, 4681.) The trial court cannot rewrite the ABAS in order to obtain the result it wishes, and neither can Dr. Prichard. The fact is that the ABAS—which is the prevailing instrument used to measure adaptive functioning—was not normed on a prison population, and the questions on the test were not designed to be answered by incarcerated people. Dr. Prichard cannot merely substitute prison behaviors for those displayed by people in the community and call it good, and the trial court certainly cannot rely on such unscientific and subjective criteria to determine whether someone is ID in a death case.

Additionally, it is axiomatic that when evaluating a person's adaptive behavior, the clinician must not consider criminal behavior, because it is the opposite of adaptive behavior—it is by definition maladaptive behavior, and the two are "completely different concepts." (PCR. 4709.) However, the trial court found that Williams's conduct was relevant to his adaptive functioning because "it shows not only that Defendant had the ability to orchestrate and carry out his crimes, but also that through his acts of self-preservation he had the ability to adapt to his surroundings. (PCR. 2888.) The court completely ignored the fact that criminal behavior is not a part of any adaptive behavior assessment in any accepted psychological context. Further, the court also ignored the fact that Williams's "orchestration" of the crime included using a weapon he found at the scene; leaving fingerprints, DNA, blood, and saliva at the crime scene; and attacking someone who could identify him by name. These are not the acts of a criminal mastermind. Regardless, criminal acts have no place in an adaptive functioning assessment, and the court erred in considering such behavior.

Finally, the court, based on Dr. Prichard's testimony, made much of the fact that Williams earned a GED while incarcerated. Although Dr. Prichard found this fact to be "one of the most compelling factors in his assessment that [Williams] is not [ID]" (PCR. 2888), it is actually not uncommon or unusual for ID individuals to achieve a high school diploma. Dr. Tassé testified that students with ID graduate "at

a rate of 30 to 35 percent with a **regular** high school diploma." (PCR. 3996.) (emphasis added). It stands to reason that if ID people can obtain regular high school diplomas, they can certainly obtain GEDs. Additionally, Williams failed the GED the first time before passing on the second try, a fact which the court found showed his "persever[ance]" rather than showing that he could not pass a relatively simple test on the first try. (PCR. 2889.)

Dr. Prichard's opinion regarding the inability of ID people to obtain high school diplomas was not based on any accurate source or scholarly research. He arrived at this opinion through "talking with people at the Agency of Persons with Disabilities over a number of years" and "[t]alking with individuals who are intellectually disabled and their families about educational achievements and et cetera." (PCR. 5372.) In contrast, Dr. Tassé's testimony was based on official Department of Education statistics. (PCR. 3996.) The trial court inexplicably characterized Dr. Tassé's testimony as "evasive" when it was anything but. (PCR. 2889.) Perhaps it was inarticulately stated, but the answer itself was clear: 30 to 35 percent of ID people obtain high school diplomas, and most of those have mild ID. The court gave no adequate reason for dismissing Dr. Tassé's testimony. Further, Dr. Oakland separately agreed that people with mild ID can obtain GEDs (PCR. 4694), which the trial court did not dispute.

Williams proved that he meets prong two of Florida's definition of ID by virtue of his significant deficits in adaptive behavior, as demonstrated by the scores below the first percentile on the ABAS tests administered by Dr. Oakland, as well as his scientific opinion that Williams's deficits satisfy the statutory requirements.

D. Onset before age eighteen.

The third prong of an ID diagnosis—onset before age 18—derives from the recognition that ID is a developmental disability. To satisfy this component, it is not necessary that the individual was identified or formally diagnosed as ID before their eighteenth birthday. (PCR. 4018-19.) It is only necessary that limitations in adaptive behavior existed before the age of 18, that IQ testing sometime during the individual's life has reliably established an significantly sub-average intellectual behavior, and that there has been no intervening reason, such as a traumatic head injury, for the person's IQ to have diminished since the age of 18. In most cases, an accurate and reliable social history will provide sufficient evidence to show onset during the developmental stage of life. Thus, in the absence of a diagnosis of ID before the age of 18, a retrospective evaluation is required.

All of the information that Dr. Oakland gathered in his interviews and review of the available records demonstrates that Williams's adaptive deficits and substandard IQ existed prior to age 18. Janice O'Loughlin described Williams as compliant and a low academic performer. According to Dr. Oakland, the Peabody

test measures receptive language and is usually administered by special education teachers or speech language (PCR. 4723.) The Slosson test is usually given by a school psychologist as a screening measure when the school suspects there might be a problem. (PCR. 4722-23.) Based on his review of the school records, it was Dr. Oakland's opinion as an expert in special education and school psychology that Williams was socially promoted. (PCR. 4714-15.)

There is ample evidence on the record for this Court to find that both the low IQ and adaptive deficits arose prior to the age of 18.

Dr. Tassé testified that during the 1970s, there was litigation because too many minority children were being diagnosed as ID because of the stigma. (PCR. 4019-21.) Janice O'Loughlin's testimony was consistent with Dr. Tassé's testimony: special education classes were not available when Williams was in school. (PCR. 4153-55.) The lack of an actual ID diagnosis prior to age 18 is a non-issue. Dr. Prichard's reliance on the lack of a diagnosis of ID prior to the age of 18 in support of his opinion turns *Atkins* on its head; there would hardly be a need for litigation if all ID death row inmates needed to do was to submit their grade school transcripts. *See, e.g.*, *Holladay v. Allen*, 555 F.3d 1346, 1362 (11th Cir. 2009) (holding that the criteria for diagnosing ID includes determining that deficiencies were present before the defendant turned eighteen).

The trial court's "serious concerns regarding the validity of Dr. Oakland's retrospective analysis of Defendant's adaptive deficits prior to age eighteen" (PCR. 2892) are not based on faulty or inaccurate testing, but rather are attributable to the inherent difficulties in assessing the adaptive functioning of an individual who has been incarcerated for two decades. Further, the court did not refute the competent, substantial evidence that Williams's learning problems and ID were manifested in myriad ways prior to age 18. The court mentioned Dr. James's findings about Williams's early learning problems and struggles in school, and did not find that her opinion was not credible, or that any of it was contradicted by the record. (PCR. 2893.) Thus, the court's finding that Williams's ID was not manifested prior to the age of 18 is contrary to competent, substantial evidence.

Williams is intellectually disabled and thus ineligible for execution.

ARGUMENT III

FLORIDA STATUTE § 119.19 AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.852 ARE UNCONSTITUTIONAL UNDER ART. I, § 24 OF THE FLORIDA CONSTITUTION, BOTH FACIALLY AND AS APPLIED.

The lower court erred in summarily denying Williams's claim that Florida Statutes § 119.19 and Florida Rule of Criminal Procedure 3.852 violate the rights of capital litigants under Article I, Section 24 of the Florida Constitution both facially and as applied. Florida has one of the broadest public records laws in the country.

However, certain restrictions have been imposed on death row inmates before they may obtain access to the same records that are available to every other citizen. Fla. R. Crim. P. 3.852; *see also In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.,* 683 So. 2d 475, 477 (Fla. 1996).

Emboldened by this Court's repeated rejection of facial challenges to rule 3.852, the actual practice has been that Florida state agencies have used the rule and this Court's case law as a shield to avoid turning over records that would otherwise be available to any other citizen in Florida. When this Court adopted rule 3.852 in 1996, Justice Anstead emphasized in his concurring opinion:

> **[T]he State and its agencies should respond to their obligations to provide discovery in accord with the spirit of Florida's open records policy.** . . .
>
> **Trial courts must be mindful of our intention that a capital defendant's right of access to public records be recognized under this rule. If there is any category of cases where society has an interest in seeing that all available information is disclosed, it is obviously in those cases where the ultimate penalty has been imposed. . . .**
>
> [B]oth sides have cited instances of adversary system abuses where **gamesmanship** and partisanship have worked to **unreasonably delay the underlying proceedings or to obstruct the release of information.** The intent of this rule is to eliminate these practices.

In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod., 683 So. 2d at 477 (emphasis added).

Just a few years after rule 3.852 was promulgated, Justice Anstead reiterated in a concurring opinion that death row inmates should not be denied access to public records: "We need to be very careful that we not end up with an outcome where a death-sentenced defendant, whose life may literally be affected, is barred from enforcing his constitutional right as a citizen to access to public records that any other citizen could routinely access." *Sims v. State*, 753 So. 2d 66, 72 (Fla. 2000). The failure of this Court to hold the agencies accountable renders rule 3.852 unconstitutional as applied.

The Department of Corrections (DOC) utterly failed in its obligation under Florida's constitution to provide records to Ronnie Williams in a timely manner in this case. Over the course of several years of litigation during which Williams had to fight and beg for the records of his own incarceration, DOC filed five separated notices of compliance without regard to whether the representations contained therein were accurate. The lack of appreciation for the legal importance of representing that counsel for an agency looked for certain records and is certifying that those records have been provided make a mockery of this Court's efforts to "streamline" the public records process. It is more concerning that the lower court

failed to hold DOC accountable for its actions in interfering with the investigation and litigation in this case.

It was not until after DOC filed a **third** a "Notice of Compliance" on April 28, 2009 that Williams discovered that DOC unilaterally and intentionally withheld records that were contained in an "inactive" file. These records included the records of incarceration and probation in connection with the prior violent felonies. Additionally, DOC failed to provide documents such as grievances, classes attended, certificates obtained, canteen orders, inmate account balances and financial records.

Counsel is "bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the sentencing phase of trial." *Rompilla*, 545 U.S. at 377. At trial, the State relied upon prior felony convictions in aggravation; therefore, it is imperative that defense counsel gain access to all records of incarceration that were produced at or near to time of the prior crimes. It was incumbent upon counsel for DOC to ensure that the files from the individual departments within DOC were submitted to the state repository in the first instance. The records from the prior periods of incarceration may provide information in mitigation of the death sentence.

On December 9, 2009 Williams filed a motion to compel records in which he detailed the charade that had been taking place. DOC filed a response stating that "although additional records have been found with each search, the Department is

now confident that all existing records within the Department's possession have been delivered to the Repository." On December 31, 2009, DOC submitted some more records and then filed the **fifth** "Notice of Compliance," in effect arguing, that the "Department really, really means it this time." The representations made by DOC are worthless.

The DOC has thus far denied having possession of the records of prior incarceration, claiming that they were destroyed in accordance with the retention policy. The failure of DOC to maintain and produce these records has hampered Williams in the preparation of his case in mitigation of the death sentence. According to the representation of DOC concerning the retention policy, these records were available at the time that the State prosecuted Williams the first time. Given that the State used the records of the second-degree murder conviction to support one of the aggravating factors, there was a concomitant duty to turn over all records in connection with that conviction. The failure to do so is a violation of due process. *Brady,* 373 U.S. at 87. After a hearing, the court found that the DOC did not intentionally withhold records and that the retention policy was reasonable. Given the importance of these records, and the policy of this state to maintain all records concerning death penalty cases, the court's finding was an abuse of discretion.

Furthermore, Williams is intellectually disabled and he has the burden of proving that he is ineligible for execution. It is not uncommon for the State and the

State's experts to have unfettered access to the DOC records of other death row inmates who have brought Eighth Amendment challenges under *Atkins*.[13] In fact, the State has used different types of records, including financial records, from DOC files in order to defeat prior ID claims. *See Jones v. State*, 966 So. 2d 319, 328 (Fla. 2007).

Williams sought records such as inmate financial records and account balances in connection with his *Atkins* claim. In its objection, DOC refused to turn those records over, claiming they were not "relevant." This refusal to provide records hardly lives up to the "assurances of cooperation" or promise to follow an "'open file' policy." *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.,* 683 So. 2d at 477.

This Court has held that records of incarceration, specifically including inmate financial records, are directly relevant to the determination of ID in Florida. In fact, Florida death row inmate Victor Jones may be executed on the basis of records that were provide to the State's expert by DOC despite Jones's argument that it was not clinically appropriate:

> Next, Jones argues that *Atkins* essentially prohibits a determination of an individual's current adaptive skills if that person, like Jones, is in prison. . . . [T]he evidence demonstrates that both in and out of prison, Jones understands and manages his own life. . . .

[13] Williams alleged that in the case of *Joel Diaz v. Florida* (97-3305CF) in Lee County, Florida, Diaz was deprived of the very same records that the State used against him at the hearing.

> [Jones] manages the finances of his inmate account, including obtaining appropriate documentation, following up on money transfers from foreign countries, and filing grievances when he finds a discrepancy in the account. He keeps himself and his cell clean and orderly and visits the prison library twice a week.

Jones v. State, 966 So. 2d 319, 327-28 (Fla. 2007) (emphasis added). This Court clearly finds that prison records are important to an ID determination. That fact notwithstanding, defendants are entitled to their own incarceration records.

The delay and/or denial of access to crucial public records in his case resulted in Williams being denied his rights to due process and equal protection of the law. Collateral counsel for Williams must obtain all public records in existence which may bear on the issues in this case or risk issues being procedurally barred. *Porter v. State*, 653 So. 2d 375 (Fla. 1995). The denial of access to public records continuously embarrassed Williams in the presentation of his case and he has suffered prejudice. The court erred in summarily denying this claim by failing to consider how the agencies have failed to comply with the spirit of Florida Rule of Criminal Procedure 3.852 in violation of Article I, Section 24 of the Florida Constitution.

Furthermore, the court factually erred in finding that Williams did not identify the records that "were sought but denied . . . ." (PCR. 2846.) To the contrary, Williams alleged with specificity the records that he attempted to obtain access to

during the course of public records litigation.[14] Throughout the litigation of this case, Williams has clearly stated which records he sought, and the relevance of those records. The trial court's summary denial of Williams's public records claim unconstitutionally deprived him of due process and access to the courts.

ARGUMENT IV

THE FAILURE TO PROVIDE WILLIAMS WITH COMPENTENT COUNSEL FOR HIS FIRST TRIAL WAS A VIOLATION OF DUE PROCESS THAT CANNOT BE CURED.

It was error for the trial court to summarily deny Williams's claims that his retrial was tainted due to structural errors arising out of the first trial including the State's failure to ensure that the trial counsel was minimally competent and the choice to retain a consulting psychologist without regard to a conflict of interest. Williams alleged that his due process rights were violated because the trial judge and the prosecutor either knew or should have known that Williams's court-appointed counsel was incompetent because of his erratic behavior and pattern of not being

[14] September 21, 2009 order denying access to the prosecutor's personnel file (PCR. 1034-35); January 19, 2010 order denying access to the prosecutor's notes (PCR. 1252-53); January 15, 2010 order denying supplemental records including records concerning witness in cases used as aggravators (PCR. 1254-64); February 23, 2010 order denying records in the possession of the BSCO (PCR. 1283-94); February 24, 2010 order denying access to the prosecutor's notes (PCR. 1301-08); April 17, 2009 order denying access to lethal injection records (PCR. 796-800); and April 20, 2012 orders denying access to lethal injection records from DOC (PCR. 2479-85), the Attorney General's Office (PCR. 2486-89), the Medical Examiner's Office (PCR. 2490-91), and FDLE (PCR. 2492-93).

prepared in the years leading up to the trial. Even though this Court reversed the conviction and sentence on other grounds, Williams was prejudiced in his 2004 retrial due to the passage of time during which records were destroyed, witnesses died, and memories faded. (PCR. 1380-1391.) Adding to the prejudice was that the treating psychologist for Williams's first lawyer later provided confidential consultation with the State in the successful quest to obtain a death sentence. (PCR. 1427-1429). Williams was deprived of his constitutional rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments.

In his amended rule 3.851 motion that the public defender's office withdrew, attorney Bruce Raticoff was appointed to represent Williams on May 20, 1993, just two months after the indictment. (1996 T. 37-40.) The record is replete with evidence that Raticoff acted with disregard toward his client and his case and that he was grossly incompetent; further, there was a complete lack of concern by the State and the trial court for the rights of Williams. Time and time again, Raticoff came in with excuses as to why he was not ready for trial. Defense counsel requested continuances on June 1, 1993, July 26, 1993, November 22, 1993, and September 20, 1993. (1996 T. 37-63.)

On December 27, 1993, Raticoff announced that "discovery is complete" but that he needed a continuance in order to obtain an expert witness on the "intoxication issue." (1996 T. 69.) Raticoff explained that he wanted to get "rid of the case . . .

quickly" and he would need one more continuance. On March 21, 1994, Raticoff claimed that he had an expert from Colorado on the "substance abuse issue, which would be in mitigation in the case." After the trial judge inquired of the ID defendant as to whether he objected to another continuance, the continuance was granted. (1966 T. 76). On June 20, 1994, Raticoff represented that his Colorado expert would be available for deposition that summer. At another status conference on July 20, 1994, Raticoff agreed to an October trial date: "Yes. I want to get this case tried, absolutely."

On October 14, 1994, the trial judge was angry with Raticoff, not for his failure to represent his client's interests, but because he was late for court: "I don't think it's fair if you're not going to be here why counsel should have to waste her time. I'm here all the time, so I really don't care. Just a little courtesy to fellow attorneys." (1996 T. 90-98.) After offering his excuses for being late, Raticoff rambled on with excuses:

> RATICOFF: **I'm moving for a defense continuance today.** Judge, there's actually three issues that have arisen in this case. There first was my expert witness regarding intoxication has lost a bit of credibility in a recent trial. He's from Colorado and I don't feel comfortable presenting him in this court at any point in time. **Secondly, at this point, Judge, there has been a witness that's come forward to me, shall we say in the way of alibi. That has been very recently. I need to look at some documentation from Henderson Clinic.** . . .

(1996 T. 90-98.) (emphasis added).

On January 30, 1995, the State appeared in court seeking a continuance but Raticoff was a "no show." (1996 T. 99-106.) The next day, Raticoff appeared but the Court admonished him for attempting to waive his client's right to be present. On May 8, 1995, after a request for a defense continuance, Judge Shapiro announced: **"Come hell or high water we're going and I want all pre-trial motions set down and heard prior to that date or they're going to be waived."** (1996 T. 118-22.) On July 7, 1995, the trial court held a partial hearing on pre-trial motions after admonishing Raticoff for failing to provide the court with courtesy copies of the motions prior to that date. (1996 T. 126-128.)

On October 18, 1995, Raticoff requested another continuance because he had not yet been able to complete the deposition of the medical examiner. (1996 T. 294-295.) Additionally, for the first time after the case had been pending for two year, he made an *ore tenus* motion for the appointment of a confidential expert to examine his client because "this is also a death case" and because his client "was in drug rehab at the time he was arrested." (1996 T. 295-97.) Judge Shapiro directed Raticoff to state on the record his grounds for the motion:

> RATICOFF: Judge, for the record what we're asking for is, we're asking for a continuance in order to explore the possibility of a sanity/incompetence defense. . . . Judge, what we are alleging is that crack – Williams was using crack cocaine and had been hallucinating. And in fact, was – was checked into this hospital by a legal guardian, not by himself, or as a use to avoid any type –

> COURT: You're going to have to get the hospital records and may have to have the experts.

(1996 T. 299-300.) The trial judge and the prosecutor expressed concern on the record regarding a future "3.850" but did not mention replacing Raticoff. The court granted a continuance so defense counsel could "explore the issue of sanity at the time this crime was committed and also whether or not a viable intoxication defense can be brought forth." (1996 T. 302.) The records that the Court mentioned were the records that would have been available from the Henderson clinic if only someone had attempted to obtain them. These records are no longer available and they were not available at the time of the retrial. The harm cannot be cured.

On November 27, 1995, the State appeared in court and announced ready for trial. Raticoff, however, was still not prepared. During this exchange, the record reflects that Judge Shapiro was "chuckling" at Raticoff's incompetence. (1996 T. 308-309.) By November 27, 1995, Williams still had not been examined by a mental health professional. (1996 T. 305-14.) Williams was not responsible for the delay.

On February 20, 1996, another lawyer who had no connection to the case made an appearance in court to tell the judge that Raticoff was now at the University Hospital in Tamarac. (1996 T. 315, 321.)[15] **The court suggested appointing a**

[15] In response to some joke made by the trial court, Benjamin responded "Normally, I would yuck it up with the Court, also, and I really think this is not an- it doesn't sound like a laughing matter. It really doesn't sound well." (1996 T. 319.)

different lawyer, but the State objected. Two months later, on April 19, 1996, Bruce Raticoff presented and directed his own treating psychologist, local Dr. Michael Brannon, as a witness for the purpose of establishing that he was competent to represent a cognitively impaired defendant on a capital homicide case. Neither the court nor the State recognized the conflict of interest the charade presented; rather, the court appeared to presume that Raticoff would be capable of handling the trial. (1996 T. 325.) Williams was never questioned regarding his understanding of his lawyer's mental disability. Raticoff directed and led his treating physician to say that Raticoff has been suffering from bipolar disorder but he was now of "sound mind." (1996 T. 326-27.) Questioning by the Court revealed that Raticoff had previously had manic episodes. (1996 T. 328.) Without any further argument, discussion, or ruling by the Court, Williams's capital homicide trial began just ten days later. Raticoff never did what he had said he would do: he never explored an insanity defense or voluntary intoxication defense, he never obtained his client's medical records from the clinic where Williams was arrested,[16] he never filed a notice of intent to rely on the defense of insanity, he never obtained medical or psychological records for his client for treatment for childhood illnesses and injuries, and he never had his ID client evaluated by a mental health professional. Having done no

[16] The prosecutor pointed out during the guilt phase that the State could not obtain those records without a subpoena. (1996 T. 1421.)

investigation whatsoever, Raticoff was left to argue that the State had not proven its case beyond a reasonable doubt. (1996 T. 2058-2084.)

Even after the guilt phase was complete, Raticoff's mental deterioration was apparent from the record. On June 7, 1996, Raticoff appeared in court asking for a continuance of the penalty phase because of difficulties with defense mental health witnesses. Raticoff stated "**we just got to the hospital records three days ago and we need some more time."** (1996 T. 2211.) The prosecutor was more concerned with having to retry the case "down the road" rather than ensuring that the Defendant was receiving the effective assistance of counsel. (1996 T. 2214.) During the discussions about why Raticoff had not investigated for over three years, the prosecutor asked the Court to direct Raticoff to provide the State with the records. (1996 T. 2220.)[17] The defense did not present any mental health witness at the penalty phase.

Prior to sentencing, the Court held a hearing because Raticoff's license to practice law was suspended due to his failure to meet his continuing education goals. (1996 T. 2457-68.)

In 1998, the Florida Bar commenced an investigation into Raticoff's conduct based on a number of allegations regarding his failure in his duties to certain clients.

[17] To date, no one has provided those records to Williams or his subsequent counsel, not even the State.

The Florida Bar v. Bruce D. Raticoff, SC00-1923 Guilty Plea and Consent to Discipline (PCR. 1636-56.) The Amended Complaint by the Florida Bar alleged that Raticoff was hired by Ronald Greene in a criminal matter for $11,500 on July 1, 1996 but became incapacitated. (PCR. 1636-56.) Coincidentally, July 1, 1996 was the date that Ronnie Williams's penalty phase began. Raticoff later appeared on Williams's behalf at the sentencing held on November 15, 1996. The "Guilty Plea and Consent to Discipline" that was signed by Raticoff states in mitigation that **"[d]uring the time period at issue in The Florida Bar's Amended Complaint, [Raticoff] was suffering from a debilitating addiction problem. Respondent sought and obtained extensive treatment for his addiction and is currently in recovery."** (PCR. 1636-56.) (emphasis added.) The Amended Complaint dealt with issues regarding Raticoff's behavior during the same time period that he represented Williams, at the very least, through the penalty phase. Therefore, during the period that Raticoff was representing Williams on his capital murder case, his signature on the Guilty Plea and Consent to Discipline indicates that he was in the throes of active addition.[18] According to this Court's order dated December 7, 2000, Bruce Raticoff

[18] The facts set forth in the Guilty Plea raise more questions than it answers: when Dr. Brannon testified on Raticoff's behalf in front of Judge Shapiro, was he aware of Raticoff's addiction? Did Raticoff intentionally withhold that fact from the Court and his client? These issues were not explored at a deposition or hearing due to the improper summary denial.

received a reprimand for professional misconduct and he was suspended from the practice of law for 90 days, followed by a period of probation. (PCR. 1657-1676.)

On direct appeal of Williams's case, this Court reversed and remanded for a new trial. *Williams*, 792 So. 2d at 1207. . More than ten years passed between the date of the indictment and the second full trial. This delay provided the prosecution with a tactical advantage at trial. Records that would have supported a voluntary intoxication defense were destroyed, witnesses died, forensic evidence degraded, pre-trial rulings became the law of the case, and witnesses' memories had faded. Attorney Evan Baron attempted to obtain the medical records from the crisis unit but they were not longer available. Had Raticoff conducted an investigation between 1993 and 1996, he would have been able to obtain extensive school records, records from the Miami Heart Institute, other medical records from Williams's childhood, records from the Henderson mental health clinic and/or crisis stabilization unit, records from the Broward County Jail including medical records, and records from the Department of Corrections regarding prior incarcerations. Baron was left to put his client's sister on the stand with no records to corroborate her testimony during the guilt phase. Records that would have been able to substantiate evidence in mitigation (e.g., risk factors for ID and corroboration of sexual abuse) in the penalty phase have been irretrievably lost.

Additionally, during the course of public records litigation, Williams obtained records from the Office of the State Attorney that were produced during the first trial. It was then that Williams learned that the State had consulted Dr. Michael Brannon in preparation for the 2004 penalty phase. Controlling Florida Supreme Court precedent holds that it is a clear conflict of interest for a mental health expert to work on behalf of opposing sides in a criminal matter. *See Walton v. State*, 847 So. 2d 438 (Fla. 2003); *Sanders v. State*, 707 So. 2d 664, 668 (Fla. 1998).

What happened in this case is so bizarre that it is highly unlikely that there would be another similar case upon which the courts have ruled. Dr. Brannon testified at the behest of Williams's 1996 defense attorney, Bruce Raticoff, in order to establish that Raticoff was sufficiently stable to try Williams's capital case. This alone presented conflict between the client and his lawyer. At that point, their interests were adverse, although no one informed Williams of that fact. The prosecutor was present at the 1996 hearing regarding Raticoff's mental illness and stay at a mental hospital, yet the State presented no objection to Williams being tried by Raticoff. Eight years later, the same prosecutor hired Dr. Brannon as a confidential and consulting mental health expert to assist the State in the penalty phase. The fact that Dr. Brannon readily accepted the role demonstrates the prior conflict that served to prejudice Williams.

Because Williams was and remains indigent, he was constitutionally entitled to court-appointed counsel at trial under the Sixth and Fourteenth Amendments to the U.S. Constitution. *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963). He not only had the right to counsel, but he had the right to the effective assistance of counsel. *Strickland*, 466 U.S. at 687. The United States Supreme Court has held that even when there is no constitutional right to counsel, "when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause." *Evitts v. Lucey*, 469 U.S. 387, 401 (1985). In Williams's case, defense counsel's complete failure in his duty to represent his client's best interests (as manifested *inter alia*, by his failure to attend pre-trial proceedings, to prepare a defense to the crime, to conduct a reasonable investigation and present mitigation, and to continue to act in his client's interest following the conviction) whether due to mental illness, drug or alcohol addiction, or negligence, was no different than not having an attorney at all. *United States v. Cronic*, 466 U.S. 648 (1984).

Consistent with the principles underlying *Strickland*, *Cronic*, and *Evitts*, both the judge and the prosecutor had a duty to step in when it became apparent that trial counsel was not representing his client. The Supreme Court has determined that a trial court **must** initiate an inquiry if the court "knows or reasonably should know that a particular conflict exists." *Cuyler v. Sullivan*, 446 U.S. 335, 347 (1980). If the

trial judge was not alerted to the fact that Williams was not receiving the effective assistance of counsel when Raticoff appeared in Court on a capital case requesting the appointment of a mental health expert three years into the case at his client's behest, he certainly should have recognized that there was a conflict of interest when that same lawyer staged his own hearing to prove that he was competent to continue to represent Williams. Judge Shapiro had the discretion and an obligation to inquire into Raticoff's competence in the preparation of a defense in the interest of justice. "A court would be serving such an interest if it *sua sponte* removed counsel who was grossly incompetent, physically incapacitated, or conducting himself in an inappropriate manner that could not 'be cured by contempt proceedings.'" *Weaver v. State*, 894 So. 2d 178, 189 (Fla. 2004), citing *Finkelstein v. State*, 574 So. 2d 1164, 1168 (Fla. 4th DCA 1991).

The United States Supreme Court has recognized the prejudicial effect of delay on the defendant's ability to present a defense. *Barker v. Wingo*, 407 U.S. 514, 532 (1972). In *Scott v. State*, this Court reversed a defendant's first degree murder conviction, vacated his death sentence, and remanded the case to the trial court with directions to enter a judgment of acquittal because, *inter alia*, an unjustified seven-year, seven-month delay in the prosecution of this cause violated the due process clause of the Fourteenth Amendment. *Scott v. State*, 581 So. 2d 887, 892 (Fla. 1991).

The *Scott* Court reasoned that during the delay, records that Scott could have used to establish an alibi defense had been lost or destroyed, a key witness's memory had faded, and another key witness had died. *Scott*, 581 So. 2d at 891-92.

The principles underlying *Barker* and *Scott* apply in this case. No one will ever know how many records could not be located by Hale Schantz and Evan Baron but could have been found in 1993-1996 when Raticoff should have been conducting an investigation. The records from the clinics where Williams was treated as a teenager and where he was arrested had been destroyed by the time Baron and Schantz were appointed and sent their investigator to obtain the records, and neither the State nor Raticoff ever attempted to obtain them.

Even more concerning is the fact that the Broward County Sheriff's Office failed to retain the jail records from the date of Williams's arrest and during his incarceration before being sent to death row the first time. Williams was found and arrested at a crisis unit and taken to the Broward County Jail; competent counsel should and would have obtained those records in order to determine explore his client's mental state shortly after the arrest and to determine whether his client received any treatment. *See Orme v. State*, 896 So. 2d at 725. Those records are now gone. Additionally, despite the fact that the State used the records from the prior conviction against Williams, the State failed to retain the records of his incarceration in the Department of Corrections. Raticoff's failure to obtain all of these records

prior to the first trial prejudiced Williams in his 2004 retrial because the records were no long available at that point. Furthermore, one of the major witnesses for the penalty phase, Dorothea Simmons, who had information regarding the defendant's drug use prior to the homicide, was deceased by the time of the second trial. (T. 1603-11.)

The prejudicial effect of the delay in Williams's case is comparable to a due process violation based on pre-indictment delay. *Cf. United States v. Townley*, 665 F.2d 579 (5th Cir. 1982). He is entitled to an evidentiary hearing. The trial court erred in summarily denying this claim, thereby depriving Williams of his constitutional rights under the Florida and United States Constitutions.

CONCLUSION

Based on the foregoing, Williams respectfully requests relief in the form of a new trial and/or a new resentencing proceeding based upon the ineffective assistance of counsel and/or a life sentence due to his intellectual disability.

Respectfully submitted,

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CERTIFICATES OF SERVICE AND FONT

I HEREBY CERTIFY that a true copy of the foregoing has been provided to opposing counsel, Leslie T. Campbell, Assistant Attorney General, Office of the Attorney General, 1515 N. Flagler Drive, Suite 900, West Palm Beach, FL via electronic service at capapp@myfloridalegal.com this 5th day of May 2014.

Counsel further certifies that this brief is typed in Times New Roman 14-point font.

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