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IN THE SUPREME COURT OF FLORIDA

MIGUEL OYOLA,

Appellant,

v. **CASE NO. SC13-2048**

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR JEFFERSON COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Appellant Miguel Oyola relies on the initial brief to reply to the arguments presented in the State's answer brief with the additions presented below. The State has suggested that oral argument is not warranted in this case, since this appeal only addresses the deficiencies in the trial court's prior sentencing order. The sentencing order under review in this appeal is the order imposing the death sentence, not the previous one. See, Jackson v. State, 767 So.2d 1156 (Fla. 2000); Reese v. State, 728 So.2d 727 (Fla. 1999). As this Court stated in Lucas v. State, 471 So.2d 250, 251 (Fla. 1982), "[I]t is this sentence and not any prior one which may be carried out." Oyola is entitled to this Court's full appellate review procedures.

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT TRIAL COURT ERRED IN RELYING ON IMPROPER AND INVALID DECISION-MAKING FACTORS THEREBY FUNDAMENTALLY TAINTING THE DEATH SENTENCE IMPOSED IN THIS CASE.

The State dismisses the trial court's statements of improper decision-making factors made in the analysis section of the sentencing order as mere "colorful" and "inarticulate" language. (AB 21, 24) Additionally, the State relies on Kilgore v. State, 688 So.2d 895 (Fla. 1996) and Globe v. State, 877 So.2d 663 (Fla. 2004), where trial judges in the respective cases made remarks in the sentencing order suggesting improper considerations in an otherwise proper order imposing the death sentence.

As discussed in the initial brief, the trial court's statements were not mere comments, but they were fully integrated parts of the court's analysis in the case. The trial court's statement that a life sentence would be a reward for using a scheme to thwart justice was made in the analysis section of the sentencing order,

> The imposition of only a life sentence for the first degree murder committed by Oyola would be a reward to him for his elaborate scheme to use a mental health expert to thwart justice.

(SSR1:128-129) (App) In the section dealing with the robbery as an aggravator, the court first made the statement that anything other than a death sentence would amount to no punishment for the murder since the robbery conviction carried a life sentence:

> The fact that the person murdered was also the victim of the robbery is yet another reason why the legislature specified this circumstance as a justification for a death sentence in a murder case. Life imprisonment is a lawful sentence for an armed robbery. It is not a necessary element of the crime of armed robbery that the victim be killed. It is only required that the victim be put in fear at the time of the robbery. It is not a necessary element of first degree murder that the victim be robbed. A life sentence is a possible sentence for either an armed robbery or first degree murder. If there is to be any additional consequence for actually murdering the person who is the victim of an armed robbery, the death penalty should be imposed.

(SSR1:120-121)(App) The court again made reference to this a decision-making factor in the analysis portion of the order:

> The jury found the defendant guilty of armed robbery with a deadly weapon and it also found the defendant guilty of first degree murder of the same person who was robbed. This court does sentence the defendant to life imprisonment for the armed robbery. The premeditated murder of the victim of the robbery should result in some additional consequence. The imposition of a life sentence for the murder, overriding the jury's recommendation for the death penalty, would result in no additional consequence for the murder.

(SSR1:128) (App) These were not mere isolated comments in an otherwise proper sentencing analysis.

Kilgore v. State, 688 So.2d 895 (Fla. 1996), is distinguishable. Kilgore was an inmate serving a life sentence for a prior conviction when convicted of the capital felony. The trial court stated in the sentencing order the following:

> "Under certain circumstances the state not only has the right, but the obligation, to take the life of convicted murders in order to prevent them from murdering again. This is one of those cases. To sentence Mr. Kilgore to anything but death would be tantamount to giving him a license to kill."

Kilgore, 688 So.2d at 899. This Court rejected the defense argument that the "license to kill" comment meant the trial court did not consider any other sentence that death. In doing so, this Court noted that the trial court's statement preceded the trial court's evaluation of the aggravating and mitigating circumstance, and in context, the "license to kill" comment was simply an attempt to evaluate the specific evidence in Kilgore's case.

In contrast to Kilgore, the trial judge in this case was not merely evaluating specific evidence as it applied in Oyola's case. The statement about a life sentence being a reward for Oyola's scheme to use a mental health expert to avoid justice in not an evaluation of specific evidence in the case. In fact, it relies on no evidence, and there was no scheme. The court's comment also denigrates the mental health mitigation properly presented in the trial. (See, Initial Brief, Issue I for further discussion) This comment also came near the end of the court's order in the analysis and conclusion portion of the order.

The trial court's comments about death being the only way to punish Oyola for the murder, since he was going receive a life sentence already for the robbery, was also not an evaluation of specific evidence as it pertains to Oyola. This statement was the trial judge's reasoning for imposing death. Although the comment was first made during an evaluation of the robbery aggravator, it was repeated as a decision-making rationale for imposing death the

analysis part of the order. This contrasts sharply with the situation in Kilgore where the trial court may have been assessing the specific fact that Kilgore was already and inmate serving life when he killed.

The decision in Globe v. State, 877 So.2d 663 (Fla. 2004), that relied on Kilgore, is likewise distinguishable for the same reasons. The trial court in Globe was addressing the weight to be given to the fact that Globe wan an inmate already serving three life sentences at the time of the murder. In the order, the court stated,

> "Without the death penalty, there is no deterrence. Without the death penalty, there is no punishment."

Globe, 877 So.2d at 675. The trial judge then concluded that under sentence of imprisonment aggravator deserved great weight. *Ibid.* As in Kilgore, this Court concluded the trial court in Globe was merely assessing the facts to evaluate the weight to give the aggravator. For the same reasons discussed above regarding Kilgore, Globe is also distinguishable. The trial judge here was not merely evaluating specific facts and aggravators as they applied to Oyola. Stating that a life sentence for Oyola would be a reward for a scheme to use a mental health expert to avoid justice had no basis in fact, and additionally, the court was using it as rationale to impose death, not evaluate evidence. The same is true for the court's statements regarding death being the only way to punish Oyola for the murder because the court was imposing

life for the robbery. In this case, unlike Kilgore and Globe, the trial judge was stating his sentencing decision-making rationale.

This case requires a reversal for resentencing.

CONCLUSION

For the reasons presented in the initial brief and this reply brief, Oyola asks this Court to reverse his death sentence and remand the case for a new sentencing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Patrick Delaney, Assistant Attorney General, Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, at Capapp@myfloridalegal.com as agreed by the parties, and to appellant, Miguel Oyola, #N15968, UCI, 7819 N.W. 228th St., Raiford, FL 32026, on this 29th day of May, 2014.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,

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