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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1332

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Petitioner,

v.

MICHAEL D. CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ET. AL*,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COME NOW the Respondents, by and through counsel, and respond as follows to Aguirre's petition for a writ of habeas corpus which was filed on July 7, 2014 (Petition). For the reasons set out below, the Respondents move this Honorable Court to deny the petition.

RESPONSE TO JURISDICTION

In this original action, Petitioner raises claims challenging the constitutionality of his convictions and sentences and the judgment of this Court. Under Article V, Section 3(b)(9) of the Florida Constitution, this Court has jurisdiction. *See also Reynolds v. State*, 99 So. 3d 459, 465 (Fla. 2012), Fla. R. App. P. 9.030(a)(3), Fla. R. App. P. 9.100(a). However, the claims in Aguirre's petition do not merit relief.

STATEMENT OF THE CASE AND FACTS

Petitioner does not set out a statement of the case or facts. On direct appeal, this Court summarized the facts of this case in the following way:

I. FACTUAL AND PROCEDURAL BACKGROUND

> Aguirre was born in Honduras in 1980 and came to the United States in March of 2003. After arriving in Florida, Aguirre moved to 117 Vagabond Way, Seminole County. He lived there with two roommates until he was arrested for the murders at issue here.

At the time of the murders, Aguirre worked at a restaurant as a dishwasher and a prep cook. One of his duties was washing the knives. At one point, all three of the men who lived at 117 Vagabond Way worked at the same restaurant.

The victims, Cheryl Williams and Carol Bareis, lived next door to Aguirre. Carol was Cheryl's mother. Cheryl's daughter, Samantha Williams, lived with her mother and grandmother. Carol was a stroke victim, partially paralyzed, and spent most of her time in a wheelchair.

Aguirre was an acquaintance of his neighbors and occasionally visited with them socially. Samantha testified that several months before the murders she awoke at 2 a.m., and Aguirre was standing over her bed. She screamed at him and forcefully told him to leave. Samantha escorted Aguirre out the front door and locked the door behind him. The next day she reiterated that he was not to enter their residence at night without permission.

On the night of June 16, 2004, Mark Van Sandt, who was in a relationship with Samantha, went to 121 Vagabond Way to visit Samantha. He arrived at the residence around 7:30 p.m. and stayed until approximately 11:30 p.m. Samantha decided to leave with Mark and stay at his parents' house that night. When Samantha and Mark left the residence at 121 Vagabond Way, both Cheryl and Carol were inside and alive.

…

Deputy Pensa of the Seminole County Sheriff's Department was the first law enforcement officer to arrive. Deputy Pensa forcibly entered through the back door. Subsequently, two other officers, Bates and Miller, arrived at the scene. Pensa and Bates noticed blood on the floor. The officers located Cheryl's body, which blocked the front door. Thereafter, deputy Pensa found Carol lying dead on the floor in the living room. She was lying face down in a pool of blood next to her wheelchair.

One of the crime scene analysts found a ten-inch chef's knife while searching the property. The knife was found between Aguirre's residence and the victims' residence. The knife was the same make

and model used at Aguirre's place of employment. After speaking with the head chef at the restaurant where Aguirre worked, law enforcement officers determined that a ten-inch chef's knife was missing from the restaurant.[FN2]

> FN2. Aguirre's roommates also stated that the knife was similar to one that had been at their residence, which was also missing. Samantha Williams testified that her family did not own a knife of that type.

At approximately 11 a.m. on June 17, deputies knocked on the door of 117 Vagabond Way and asked Aguirre and his two roommates if they knew anything about what happened next door. Aguirre told the officers he did not know there was a problem next door. Later that same day, Aguirre approached law enforcement officers and told them that he had information about what occurred next door. He told the officers that he went into the home and saw that Cheryl was dead. However, at this point, Aguirre told them that he only knew of Cheryl's death. After Aguirre's conversations with police, he was arrested for tampering with evidence from a crime scene. Subsequently, Aguirre was indicted for murder.

...

All of the stab wounds sustained by Cheryl and Carol were consistent with being caused by the chef's knife found between the victims' residence and Aguirre's residence. The knife contained Cheryl's blood on the handle and Carol's blood on the blade, indicating that Cheryl was killed first.

A crime scene analyst testified that there were 67 bloody shoe impressions found inside the victims' residence. Of the 64 impressions that were comparable, all 64 were consistent with the footwear of Aguirre. The soles of his shoes contained Cheryl's blood. Law enforcement officers obtained a search warrant for the property at 117 Vagabond Street and retrieved the bag of clothes. Aguirre's underwear, socks, T-shirt, and shorts contained Cheryl's blood. Further, Aguirre's T-shirt, shorts, and underwear contained Carol's blood and DNA.

A Florida Department of Law Enforcement (FDLE) bloodstain pattern analyst also examined Aguirre's clothing. Aguirre's shorts had contact stains on both the front and back. The back of his shorts also had bloodstains that were not contact stains but arrived on his shorts through some type of motion, either impact spatter or cast off. His socks had contact stains as well as spots that were "consistent with dropped blood."

According to Aguirre's testimony during the guilt phase, he had the day before the murders off from work so he began drinking early. He and his friends continued to drink throughout the day and night.[FN4] Aguirre returned back to 117 Vagabond Way at approximately 5 a.m. on the morning of the murders.

> FN4. Dr. Day, Aguirre's psychologist, testified during the penalty phase that Aguirre admitted to obtaining and using powder cocaine the day before the murders.

Aguirre stated that he watched television and then got up to look for beer. There was no beer in his trailer so he walked next door. He attempted to go inside, but Cheryl's body was blocking the door. However, he managed to make it inside, and he lifted Cheryl's body on to his lap and tried to revive her. He realized she was dead so he put her back on the floor where he found her. Aguirre then walked toward the living room where Carol spent the majority of her time and found her dead as well. While in the house, Aguirre noticed the murder weapon sitting on a box near where Cheryl was lying. He stated that he feared the killer was still inside the house; therefore, he picked up the knife and screamed, "Is anybody here?" There was no reply. He then walked to Samantha's room. She was not there, but her room had been ransacked.

Thereafter, Aguirre ran outside towards his residence and tossed the knife into the grass. He then stripped off all his clothes, placed them in a plastic bag, set the bag on top of his shed, and bathed. Aguirre initially planned to burn the clothes. He explained that he did not call police and report the murders because he was an illegal immigrant and afraid of deportation.

The jury convicted Aguirre on two counts of first-degree murder and one count of burglary with an assault or battery. Following the penalty phase, the jury recommended the death sentence for the murder of Cheryl Williams by a vote of seven to five. The jury recommended the death sentence for the murder of Carol Bareis by a vote of nine to three. After the *Spencer*[FN5] hearing, Judge O.H. Eaton, Jr. sentenced Aguirre to two death sentences, finding the aggravators outweighed the mitigators.[FN6]

FN5. *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

FN6. For the murder of Cheryl Williams, Judge Eaton found the following aggravators: (1) the defendant was previously convicted of another capital felony (moderate weight); (2) the capital felony was committed while the defendant was engaged in the commission of a burglary (moderate, but less than great weight); (3) the capital felony was especially heinous, atrocious, or cruel (great weight). For the murder of Carol Bareis, Judge Eaton found the following aggravators: (1) the defendant was previously convicted of another capital felony (great weight); (2) the capital felony was committed while the defendant was engaged in the commission of a burglary (moderate, but less than great weight); (3) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest (great weight); (4) the capital felony was especially heinous, atrocious, or cruel (great weight); (5) the victim of the capital felony was particularly vulnerable due to advanced age or disability (great weight).

The following mitigating circumstances were found: (1) under the influence of extreme mental or emotional disturbance (moderate weight); (2) substantially impaired ability to appreciate the criminality of his conduct (moderate weight); (3) age (24) (little weight); (4) long term substance abuse problem (moderate weight); (5) dysfunctional family setting (little weight); (6) childhood abuse (little weight); (7) poor performance in school (little weight); (8) brain damage from substance abuse (moderate weight).

Aguirre-Jarquin v. State, 9 So. 3d 593, 598-600 (Fla. 2009). This Court denied relief on all of Aguirre's direct appeal claims and affirmed the convictions and sentences of death. Aguirre filed a motion for post-conviction relief pursuant to *Florida Rule of Criminal Procedure* 3.851 on February 9, 2011, an amended motion on March 25, 2011, a second amended motion on June 29, 2012, and a third amended motion on January 16, 2013. The trial court bifurcated Aguirre's evidentiary hearing to allow for DNA testing. The hearings were held on March 19-23, 2012, and May 13-21, 2013. The trial court denied post-conviction relief on August 28, 2013. Aguirre's contemporaneous appeal from the denial of post-conviction relief is pending before this Court in case number SC13-2092.

GROUNDS CLAIMED FOR HABEAS RELIEF

I. The Free-Standing Innocence Claim

In his first claim for habeas relief, Aguirre raises essentially the same claim as Issue VI(2) in his appeal from the denial of post-conviction relief in SC13-2092. Aguirre argues that he has proven by clear and convincing evidence his actual innocence and that this Court should read an actual innocence grant of relief into the Florida Constitution.

In his newly discovered evidence claim in the 3.851 appeal, Aguirre asks this Court for a new trial. In this claim for habeas relief, Aguirre asks for the same

thing. Aguirre quotes decisions containing dicta that speak of the travesty of executing an innocent man. The State does not disagree with Justice O'Connor's opinion that, "executing the innocent is inconsistent with the Constitution…contrary to the contemporary standards of decency…shocking to the conscience [and] offensive to a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O'Connor, J. concurring in the denial of federal habeas petitioner's claim of actual innocence); (*Petition* at 3). But the State also agrees with Chief Justice Rehnquist that to grant the relief Aguirre requests would be to do so, "[N]ot because of any constitutional violation at…trial, but simply because of a belief that in light of his new found evidence a jury might find him not guilty at a second trial." *Cf. Herrera*, 506 U.S. at 404.[1] To that end, *if* Aguirre is successful in his newly discovered evidence claim in his 3.851 appeal (and the State contends that he will not be), he would be granted a new trial.

Nonetheless, Aguirre ends his argument with "[E]ven if [Aguirre] had a constitutionally fair trial with constitutionally effective counsel…upholding his death sentence and allowing his execution to go forward violates…the United States Constitution and…the Florida Constitution." (*Petition* at 11). Based on the

[1] In *Herrera*, the petitioner was in federal court under 28 U.S.C. § 2254 requesting his sentence be vacated and he be granted a new trial based on the evidence he produced in post-conviction to support his innocence theory.

cases Aguirre cites to the Court from other jurisdictions, it appears (though it is not clear from the vague argument) that Aguirre is asking this Court to recognize the free standing innocence claim in post-conviction based entirely on facts independent of a petitioner needing to show an antecedent constitutional violation.

First, like Issue IV(2) of the 3.851 appeal, the merits of this issue are entirely contingent on Aguirre's success or failure in establishing his newly discovered evidence claim in the contemporaneous 3.851 appeal. And the merits of the newly discovered evidence claim rests on determinations of fact and credibility—questions best suited for the trier of fact—not questions of legal error. Indeed, the evidence supporting his newly discovered evidence claim is the same evidence Aguirre argues should persuade this Court to manufacture whole cloth a free standing claim of innocence by reading into the Constitution or statutes words that are not there. Aguirre cites cases from a smattering of states to have done so under their own jurisprudence and asks this Court to recede from its previous rejection of a free standing innocence claim. *See Tompkins v. State*, 994 So. 2d 1072, 1088 (Fla. 2008) (citing *Rutherford v. State*, 940 So. 2d 1112, 1122 (Fla. 2006). In rejecting the free standing innocence claim, this Court held,

> Under Florida law, this Court reviews the sufficiency of the evidence on direct appeal. If new evidence subsequently surfaces, Florida law allows a defendant to bring a newly discovered evidence claim, as announced in *Jones.*

Tompkins, 994 So. 2d at 1089. The relief Aguirre asks this Court to grant in his free standing innocence claim is the same relief this Court would grant should he prevail on his newly discovered evidence claim. This Court need not do more. As for the merits of Aguirre's newly discovered evidence in post-conviction, the State rests on its arguments in the answer to Aguirre's newly discovered evidence claim in the contemporaneous 3.851 appeal.

The newly discovered evidence standard has the relief Aguirre requests built into it; the same relief granted in the cases from other jurisdictions that Aguirre cites. *See Montoya v. Ulibarri*, 163 P.3d 476, 488 (N.M. 2007) (Distinguishing New Mexico law from *Herrera* in recognizing free-standing innocence claim but finding that the petitioner's post-conviction evidence would not likely change the result on retrial, thus he was not entitled to a new trial); *State v. Graham*, 57 P.3d 54, 57 (Mont. 2002) (A meritorious factual claim of actual innocence would be sufficient to excuse failure to meet time limitations for post-conviction motions, however, petitioners must show more than reasonable doubt; petitioners must show that no reasonable juror would have convicted and Graham's exculpatory statements fail to meet that standard). *Ex parte Elizondo*, 947 S.W.2d 202, 209-10 (Tex. Crim. App. 1996) (superseded by statute) (Applicant met the standard for factual innocence claim in post-conviction under Texas law and was remanded for a new trial). *Summerville v. Warden*, 641 A.2d 1356 (Conn. 1994) (Recognizing

under Connecticut law the free standing innocence claim need not have an antecedent constitutional violation but that Summerville's evidence in post-conviction did not meet the standard and the habeas court was not required to consider whether the petitioner was entitled to a new trial based on that evidence).[2] *DiMattina v. United States*, 949 F.Supp.2d 387, 418-22 (E.D.N.Y. 2013) (Petitioner in federal habeas—heard, strangely out of place, by the district court prior to the direct appeal—failed to establish factual innocence to warrant a new trial for his federal conviction). Bottom line, this Court need not recede from *Tompkins*. Aguirre has a mechanism to pursue a remedy based on newly discovered evidence.

Second, Aguirre's argument to read a free standing innocence claim into the Florida Constitution says nothing of this Court's precedent of judicial restraint in its interpretation of our Constitution. *See Lewis v. Leon County*, 73 So. 3d 151, 153-54 (Fla. 2013) ("If the language [used in the constitution] is clear [and] unambiguous…then it must be enforced as written"); *Koile v. State*, 934 So. 2d 1226, 1230-31 (Fla. 2006) ("When the statute is clear and ambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent"). There can be no ambiguity in the

[2] *See also Summerville v. Warden*, 614 A.2d 842, 852 (Conn. App. Ct. 1992).

absence of text that Aguirre asks this Court to read into the Constitution and speculate as to the intent of the framers and votes. *Id*.

Aguirre is asking this Court to maneuver on our Constitution with a power-grab that smacks of judicial legislation, invades the province of the Legislature, and snubs the will of the People of Florida by ignoring what they have *not* included in the text of the Constitution or statutes (and it is not as if the Florida Constitution is overly difficult to amend).[3] This Court should abstain from the high-handed approach Aguirre asks this Court to take.

II. The Shackling Claim

Aguirre claims that appellate counsel was ineffective for failing to challenge the fact that Aguirre was shackled during his trial.

A. Standard of Review

The standard of review for ineffective appellate counsel claims mirrors the standard for ineffective assistance of trial counsel set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).

> In order to grant habeas relief on ineffectiveness of appellate counsel, this Court must determine...first, whether the alleged omissions are of such magnitude as to constitute a serious error or substantial

[3] See Art. 11 § 1, Fla. Const. (proposal by legislature), § 2 (revision commission), § 3 (voter initiative), § 4 (constitutional convention). E.g., Art. X, § 21, Fla. Const., limiting cruel and inhumane confinement of pigs during pregnancy adopted by voter initiative in the 2002 general election along with § 19 relating to high speed ground transportation and § 20 related to prohibiting workplace smoking.

> deficiency falling measurably outside the range of professionally acceptable performance and, second, whether the deficiency in performance compromised the appellate process to such a degree as to undermine confidence in the correctness of the result.

Wickham v. State, 124 So. 3d 841, 863 (Fla. 2013) (citing *Pope v. Wainwright,* 496 So.2d 798, 800 (Fla. 1986). "[A]ppellate counsel will not be deemed ineffective for failing to raise meritless issues or issues that were not properly raised in the trial court and are not fundamental error." *Wickham*, 124 So. 3d at 863 (citing *Valle v. Moore*, 837 So. 2d 905, 908 (Fla. 2002)).

Courts cannot routinely place defendants in shackles or other physical restraints *visible* to the jury during the penalty phase of a capital proceeding. *Deck v. Missouri*, 544 U.S. 622, 633 (2005) (emphasis added). Trial counsel did not object to Aguirre being shackled during the trial. Failing to raise a[n] objection waives any claim for appellate review. *Mosley v. State*, 46 So. 3d 510, 519 (Fla. 2009). "The sole exception…is where the unobjected-to [issue] rise[s] to the level of fundamental error." *Id*. *See also Crump v. State*, 622 So. 2d 963, 972 (Fla. 1993) ("Absent fundamental error, we find that the defense counsel failed to preserve the issue for review, thus precluding appellate review"). Fundamental error is an error that "reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." *Mosley*, 46 So. 3d at 519. If the error did not vitiate the Defendant's right to a fair

trial, this Court should deny relief. *Braddy v. State*, 111 So. 3d 810, 843 (Fla. 2012).

"It would be a manifest miscarriage of justice to the victims and the citizens of this community to [grant the Defendant relief] under the circumstances herein when the circumstances have been created by the defendant himself." *Wike v. State*, 698 So. 2d 817, 819-20 (Fla. 1997).

B. Evidence in Post-Conviction

During the evidentiary hearing, the following fact about shackling developed.

Deputy Samuel Belfiore

Deputy Samuel Belfiore was the lead courtroom deputy during Aguirre's trial. (V17, R88-89, 990). He was in the courtroom for hundreds of trial with Judge Eaton. As a courtroom deputy, he moves around the courtroom throughout the proceedings. (V17, R994; V18, R1006). Inmates in custody are routinely shackled as it is an administrative judge policy; however, Judges had discretion. (V18, R1007-08). Defendants are shackled with leg restraints connected to a belly chain with either a small or large linked chain before leaving the jail. (V17, R990-91; V18, R1009). Aguirre's leg restraints were the same restraints used on defendants on a daily basis. (V17, R989-90).

Prior to the start of a proceeding, the belly chain is removed from a defendant with the leg restraints left in place. Defendants are instructed to keep legs underneath the defense's desk and to remain seated when the jury comes in the courtroom. "It's not that much chain and they're not that loud." (V17, R992; V18, R1014). After the defendant is seated with his legs under the table, the jury "virtually cannot hear anything because of the fact that they're in that little box and the sound is muffled." (V17, R992). The noise is also muffled by the three-sided framed desk, the noise of the courtroom, and computer noises. (V17, R993, 998).

Approximately two weeks prior to the evidentiary hearing, (at the State's request) Belfiore[4] sat in each jury seat used during Aguirre's trial, "moving all around in the seats" to see if jurors were able to view Aguirre's leg shackles. (V17, R989, 997; V18, R1009-10, 1013). Jurors would only have been able to see Aguirre "for a brief instant should they be looking at him" when he had his outburst during the penalty phase. (V18, R1013).

Aguirre sat closest to the deputy's desk with his attorneys next to him. (V17, R993). Belfiore did not hear chains when he was posted by the jury. (V17, R994). Aguirre stood up during Dr. Riebsame's testimony. Two deputies immediately grabbed each of Aguirre's arms and escorted him out the courtroom door into a holding cell. The incident took approximately 5-10 seconds. (V17, R994-95).

[4] Two additional deputies were present. (V17, R996, 997).

Etienne Van Hissenhoven

Van Hissenhoven was Aguirre's Spanish interpreter at trial. Aguirre was shackled during his trial. (V13, R150-51, 161). Van Hissenhoven recalled when Aguirre got upset during Dr. Riebsame's testimony. Aguirre stood up, and, in English, called Riebsame a liar. Bailiffs removed Aguirre removed from the courtroom. The jury was present at the time. Van Hissenhoven continued interpreting while Aguirre was led out of the courtroom. (V13, R156, 157, 160).

Attorney James Figgatt

Aguirre was always brought in the courtroom before the jury was seated. (V13, R120, 122). Aguirre did not have any restraints on his hands. (V13, R123). Aguirre was provided with a shirt, tie, slacks, socks, and shoes. He did not wear jail clothes during the trial. (V13, R131). Figgatt recalled one time during the penalty phase when Aguirre was led out of the courtroom after he had outburst during Dr. Riebsame's testimony.[5] (V13, R104-05). Figgatt thought the jury *heard* Aguirre's shackles. (V13, R117). Figgatt would have moved for a mistrial if he believed the jury *saw* Aguirre's shackles as he was escorted out of the courtroom. (V13, R101). Nonetheless, Figgatt is accustomed to the shackle noise and tends to "tune it out." (V1, R118).

[5] Joint Exhibit 1 is a CD containing a certified copy of the videotaped trial. (V13, R135).

Attorney Time Caudill

Aguirre was shackled during the trial which was routine practice in the Eighteenth Circuit. (V15, R437). Caudill did not file a motion objecting to the shackling because it would not have been granted. (V15, R476-77, 502-03). Although Aguirre got upset during Dr. Riebsame's testimony and he was led out of the courtroom, Caudill did not move for a mistrial as he believed the jury did not see the shackles. (V15, R437-38). Aguirre's outburst included "expletives" toward the assistant state attorney. In Caudill's opinion, it was best for Aguirre's outburst "to end quickly without further damage to his case" and a chance of "success in ultimately saving his life" and prevent "further damage to him because I didn't want him to get hurt." (V15, R477-78). Throughout the trial, Judge Eaton ensured that Aguirre was brought in and out of the courtroom before the jury entered or was dismissed. Also, Aguirre was not restrained in any manner when he walked to the witness stand and testified in his own defense. (V15, R479, 480, 481).

C. Argument

First, Aguirre overstates the constitutional principle from *Deck*, which limits its prohibition to *visible* shackles. *Deck*, 544 U.S. at 632. *Deck* does not prohibit the use of shackles in the manner Judge Eaton employed for capital cases in his circuit. The courtroom deputy ensured, at the State's request, that none of the jurors would be able to see the restraints as long as Aguirre remained seated as

instructed. Judge Eaton ensured that Aguirre was seated with his legs under the table concealing his leg restraints before the jury entered the courtroom. The court also ensured that Aguirre's restrains remained concealed from the jury, not allowing any possible exposure of the restraints until after the jury has retired. And when Aguirre testified at his guilt phase, he walked to the witness stand free of any form of restraint.

Second, the routine shackling was not necessarily evident from the direct appeal record. There was nothing meritorious for appellate counsel to argue. The post-conviction testimony about this issue demonstrated the issue required further development and was not readily apparent on the record of trial. Both attorneys testified that it was customary for a capital defendant to be shackled during both the guilt and penalty phases in the Eighteenth Circuit. According to Deputy Belfiore, the only time that any member of the jury could have seen that Aguirre was restrained was during the brief period in the penalty phase when Aguirre was removed from the courtroom after his outburst—a spectacle of Aguirre's own doing. The State and courtroom deputies took substantial precautions to avoid calling the jury's attention to the shackles, as were the circumstances of Aguirre's removal from the courtroom. And it is not likely that any of the jurors heard Aguirre's shackles over Aguirre's own verbal outburst and the interpreter continuing to speak as Aguirre was taken out of the courtroom. Under those

circumstances, Aguirre's restrains during trial could not have vitiated his trial, thus, appellate counsel was not effective for failing to raise a meritless claim. Appellate counsel had not clear record nor any meritorious legal basis to raise a claim against Aguirre's restrains that were not visible to his jury.

CONCLUSION

Based on the foregoing authority and arguments, the Respondents respectfully request that this Honorable Court deny Aguirre's petition for a writ of habeas corpus.

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CERTIFICATE OF SERVICE

I certify that on September 22, 2014, I filed the foregoing pleading using the E-Portal system which will generate a notice of filing and electronically serve the document on the following: Maria E. Deliberato, Assistant CCRC-Middle, deliberato@ccmr.state.fl.us; Julissa R. Fontan, Assistant CCRC-Middle; fontan@ccmr.state.fl.us, support@ccmr.state.fl.us; Capital Collateral Regional Counsel, 3801 Corporex Park Drive, Suite 210, Tampa, FL 33619-1136; Marie-Louise Samuel Parmer, Esquire, marie@samuelsparmerlaw.com; The Samuels Parmer Law Firm, P.O. Box 18988, Tampa, FL 33679.

/S/ Mitchell D. Bishop

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CERTIFICATE OF COMPLIANCE

This brief is typed in Times New Roman 14 point font.

/S/ Mitchell D. Bishop

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