IN THE SUPREME COURT OF FLORIDA
CASE NO. _____

ENOCH D. HALL
Petitioner,
v.
JULIE JONES
Secretary, Florida Department of Corrections,
Respondent.
and
PAMELA BONDI
Attorney General,
Additional Respondent,

PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

Article I, Section 13 of the Florida Constitution provides: "The writ of habeas corpus shall be grantable of right, freely and without cost." This petition for habeas corpus relief is being filed in order to address substantial claims of error under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United states Constitution. These claims demonstrate that Mr. Hall was deprived of the right to a fair, reliable trial and individualized sentencing proceeding and that the proceedings resulting in his conviction and death sentence violated fundamental constitutional imperatives.

Citations shall be as follows: The record on appeal concerning the original court proceedings shall be referred to as "R ____" followed by the appropriate volume and page numbers. The postconviction record on appeal will be referred to as "PCR ___" followed by the appropriate page numbers and volume, if applicable. All other references will be self-explanatory or otherwise explained herein.

REQUEST FOR ORAL ARGUMENT

The resolution of the issues in this action will determine whether Mr. Hall lives or dies. This Court has allowed oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument would be appropriate in this case, given the seriousness of the claims involved and the fact

that a life is at stake. Mr. Hall accordingly requests that this Court permit oral argument.

INTRODUCTION

Significant errors which occurred at Mr. Hall's capital trial and sentencing were not presented to this Court on direct appeal due to the ineffective assistance of appellate counsel.

The issues, which appellate counsel neglected, demonstrate that counsel's performance was deficient and that the deficiencies prejudiced Mr. Hall. "[E]xtant legal principles ...provided a clear basis for... compelling appellate argument[s]." Fitzpatrick v. Wainwright, 490 So.2d 938, 940 (Fl. 1986). Neglecting to raise fundamental issues such as those discussed herein "is far below the range of acceptable appellate performance and must undermine confidence in the fairness and correctness of the outcome." Wilson v. Wainwright, 474 So.2d 1162. 1164 (Fla. 1985). Individually and "cumulatively," Barclay v. Wainwright, 444 So.2d 956, 959 (Fla. 1984), the claims omitted by appellate counsel establish that "*confidence* in the correctness and fairness of the result has been undermined." Wilson, 474 So.2d at 1165 (emphasis in original).

The constitutionality of statutes are pure questions of law and rulings are, therefore, subject to *de novo* review. Troy v. State, 948 So. 2d 635, 643 (Fla. 2006).

Additionally, this petition presents questions that were ruled on at trial or on direct appeal but should now be revisited in light of subsequent case law or in order to correct error in the appeal process that denied fundamental constitutional rights. As this petition will demonstrate, Mr. Hall is entitled to habeas relief.

JURISDICTION TO ENTERTAIN PETITION AND GRANT HABEAS CORPUS RELIEF

This is an original action under Fla. R. App. P. 9.100(a). *See* Art. I, Sec. 13, Fla. Const. This Court has original jurisdiction pursuant to Fla. R. App. P. 9.030(a)(3) and Art. V, Sec. 3(b)(9), *Fla. Const.* The Petition presents constitutional issues which directly concern the judgment of this Court during the appellate process and the legality of Mr. Hall's sentence of death.

Jurisdiction in this action lies in this Court, *See, e.g.*, Smith v. State, 400 So.2d 956, 960 (Fla. 1981), for the fundamental constitutional errors challenged herein arise in the context of a capital case in which this Court heard and denied Mr. Hall's direct appeal. See Wilson, 474 So.2d at 1163 (Fla. 1985). A petition for a writ of habeas corpus is the proper means for Mr. Hall to raise the claims presented herein. *See e.g.*, Way v. Dugger, 568 So.2d 1263 (Fla. 1990); Downs v. Dugger, 514 So.2d 1069 (Fla. 1987); Riley v. Wainwright, 517 So.2d 656 (Fla. 1987); Wilson, 474 So.2d at 1162.

This Court has the inherent power to do justice. The ends of justice call on the

Court to grant the relief sought in this case, as the Court has done in similar cases in the past. The petition pleads claims involving fundamental constitutional error. See Dallas v. Wainwright, 175 So.2d 785 (Fla. 1965); Palmes v. Wainwright, 460 So.2d 362 (Fla. 1984). The Court's exercise of its habeas corpus jurisdiction, and of its authority to correct constitutional errors such as those herein pled, is warranted in this action. As the petition shows, habeas corpus relief would be more than proper on the basis of Mr. Hall's claims.

GROUNDS FOR HABEAS CORPUS RELIEF

By his petition for a writ of habeas corpus, Mr. Hall asserts that his capital conviction and sentence of death were obtained and then affirmed during this Court's appellate review process in violation of his rights as guaranteed by the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

PROCEDURAL HISTORY

On July 10, 2008, Enoch Hall was indicted by grand jury for the first degree murder of Florida Department of Corrections Officer (hereinafter "CO") Donna Fitzgerald. R1017-1018/V7 The State filed a Notice to Seek the Death Penalty. R1022/V7

Trial counsel unsuccessfully contested the legality of Florida's death penalty

statute under Ring v. Arizona, 536 U.S. 584 (2002). R1124-1172/V8 Counsel's request for interrogatory verdicts for the penalty phase was also denied. R1429-1432/V9; R1592/V10 The trial court denied the Defense's motion to suppress three statements made to Florida Department of Law Enforcement (hereinafter "FDLE") at the time of Mr. Hall's arrest. R1411/V9; R1520/V10

This case proceeded to jury trial on October 12, 2009. R1623/V10 Following deliberations, the jury returned a verdict of guilty of first degree murder. R2893/V30

On October 27, 2009, this cause proceeded to a penalty phase. R1666/V10) Following deliberations, the jury unanimously recommended death. R1725/V11

A Spencer[1] hearing was held on December 7, 2009. R1729/V11

In the Sentencing Order, the trial court found that five aggravating circumstances and been proven by the State, including that the offense was cold, calculated and premeditated (hereinafter "CCP") R1790-1799/V11 The court did not find any statutory mitigators had been established. R1810/V11 The Defense also argued for twelve non-statutory mitigators, but the court found that only eight had been proven. R1800-1810/V11 The trial court concluded that the aggravating factors "far outweighed" the mitigating factors and sentenced Enoch Hall to death on

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

January 15, 2010. R1810/V11

On direct appeal, the Florida Supreme Court held that the trial court's finding of CCP was not supported by competent, substantial evidence. Accordingly, the CCP aggravator was stricken. Id. at 278-279. However, the convictions and sentence were affirmed. Id. at 281. Mr. Hall's Cert. Petition was denied on October 7, 2013. See, Hall v. Florida, 134 S.Ct. 203 (2013).

CCRC-Middle was appointed to represent Mr. Hall in his postconviction proceedings on February 8, 2013. Mr. Hall filed his Motion for Postconviction Relief pursuant to Fla.R.Cr.P 3.851 on September 17, 2014. PCR1188-1266 The defendant raised 11 claims.

An evidentiary hearing was held from May 4-7, 2015. PCR151-1052 The trial court denied Mr. Hall's claims on July 8, 2015. PCR2254-2281 Mr. Hall's Motion for Rehearing was denied on August 7, 2015. PCR2283-2286 Mr. Hall filed a timely notice of appeal. An initial brief, filed concurrently with this petition, follows.

ARGUMENT CLAIM I

Appellate counsel was ineffective for failing to challenge the constitutionality of Florida Statute 921.141. It is facially vague and overbroad in violation of the 8th and 14th Amendments, and the unconstitutionality was not cured because the jury did not receive adequate guidance in violation of the 8th and 14th Amendments. The trial court's instructions to the jury unconstitutionally diluted its sense of responsibility in determining the proper sentence. Mr. Hall's death sentence is premised on fundamental error which must be corrected.

The trial court found this claim is without merit.

Appellate counsel was ineffective for failing to challenge the fact that Mr. Hall's jury was unconstitutionally instructed by the Court that its role was merely "advisory." (R3583-3584, Vol. 35) Because great weight is given the jury's recommendation, the jury is a sentencer in Florida. Here, however, the jury's sense of responsibility was diminished by the misleading comments and instructions regarding the jury's role. This diminution of the jury's sense of responsibility violated the Eighth Amendment. *See, Caldwell v. Mississippi*, 472 U.S. 320 (1985). Moreover, subjecting Mr. Hall to death based on a non-unanimous jury recommendation violates Mr. Hall's Eighth Amendment Rights, as it conflicts with the nation's evolving standards of decency.

ARGUMENT CLAIM II

Based on the principle of evolving standards of decency, Florida's capital sentencing statute is unconstitutional on its face and as applied for failing to prevent the arbitrary and capricious imposition of the death penalty and for violating the guarantee against cruel and unusual punishment in violation of the 5th, 6th, 8th and 14th Amendments to the United States Constitution.

The trial court denied this claim, based on the opinion that the issues raised were either procedurally barred and/or without merit. That was error.

Based on the principle of evolving standards of decency, Florida's capital sentencing scheme denies Mr. Hall his right to due process of law, and constitutes cruel and unusual punishment on its face and as applied.

Florida's death penalty statute is constitutional only to the extent that it prevents arbitrary imposition of the death penalty and narrows application of the penalty to the worst offenders. *See, Profitt v. Florida*, 428 U.S. 242 (1976).

Florida's death penalty statute, however, fails to meet these constitutional guarantees, and therefore violates the Eighth Amendment to the United States Constitution. *Richmond v. Lewis*, 113 S.Ct. 528 (1992).

Execution by lethal injection imposes unnecessary physical and psychological torture without commensurate justification, and therefore constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Florida's death penalty statute fails to provide any standard of proof for determining that aggravating circumstances "outweigh" the mitigating factors, *Mullaney v. Wilbur*, 421 U.S. 684 (1975), and does not define "sufficient aggravating circumstances." Additionally, the statute does not sufficiently define for the judge's consideration of each of the aggravating circumstances listed in the statute. *See*, *Godfrey v. Georgia*, 446 U.S. 420 (1980).

Most importantly, the United States Supreme Court has reiterated its opinion that a jury must make findings of fact. *See*, *Hurst v. Florida*, No. 14-7505, --- S.Ct. ----, 2016 WL 112683 (U.S. Jan. 12, 2016). The Sixth Amendment guarantees that

> "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a *jury beyond a reasonable doubt*. . . . "[A]ny fact that "expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an "element" that *must be submitted to a jury*."

Hurst 2016 WL at 4-5, *quoting* U.S. Const. Amend. VI.; *citing Alleyne v. United States*, 133 S.Ct. 2151 (2013); and *quoting Apprendi v. New Jersey*, 530 U.S. 466, 494 (emphasis added). *Hurst* held that Florida's capital sentencing scheme violated the Sixth Amendment because it allowed a judge, not a jury, to find each fact necessary to impose a sentence of death. Furthermore, the Court in *Hurst* held, "A jury's mere recommendation is not enough."

The Court explained that to be eligible for a death sentence under Florida's capital sentencing scheme, the following facts had to have been found (1) that sufficient aggravating circumstances exist, and (2) that there are insufficient mitigating circumstances to outweigh the aggravating circumstances. *See* §921.141(3), Fla. Stat. Neither of these facts were found to have been proved by Mr. Hall's jury. The jury's advisory recommendation does not satisfy the requirement that a death sentence be based on a jury's verdict, not a judge's fact finding.

Hurst applies to Mr. Hall especially in light of the fact that at trial and on direct appeal he preserved his Sixth and Eighth Amendment challenges to Florida's statute. R1124-1172/V8 and ROA – Initial Brief 4/4/11 *Hurst* error is structural and not amenable to harmless error analysis. Futhermore, Mr. Hall must be resentenced to life imprisonment pursuant to the mandatory language of §775.082(2), Fla. Stat. (2015).

Florida's capital sentencing procedure is also faulty because it does not utilize the independent re-weighing of aggravating and mitigating circumstances envisioned in *Profitt v. Florida*, 428 U.S. 242 (1976).

The aggravating circumstances in the Florida capital sentencing statute have been applied in a vague and inconsistent manner. *See, Godfrey v. Georgia;*

Espinosa v. Florida, 112 S. Ct. 2926 (1992).

Florida law creates a presumption of death where but a single aggravating circumstance applies. This creates a presumption of death in every felony murder case, and in almost every premeditated murder case. Once one of these aggravating factors is present, Florida law provides that death is presumed to be the appropriate punishment, and can only be overcome by mitigating evidence so strong as to outweigh the aggravating factors.

The systematic presumption of death is fatally offensive to the Eighth Amendment's requirement that the death penalty be applied only to the worst offenders. *See, Richmond v. Lewis*, 113 S. Ct. 528 (1992); *Furman v. Georgia*, 408 U.S. 238 (1972); *Jackson v. Dugger*, 837 F.2d 1469 (11th Cir. 1988).

Because of the arbitrary and capricious application of the death penalty under the current statutory scheme, the Florida death penalty statute as it exists and as it was applied in this case is unconstitutional under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under Article 1 Section 17 of the Constitution of the State of Florida. Its application in Mr. Hall's case entitles him to relief.

CONCLUSION AND RELIEF SOUGHT

For all the reasons discussed herein, Enoch D. Hall respectfully urges this Honorable Court to grant habeas relief in the form of a new trial and sentencing. Moreover, this Court should grant any other relief that allows this Court to achieve justice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Habeas Corpus has been furnished to the clerk of court through the E-Portal and by email to Stacey Kircher, Assistant Attorney General, Stacey.Kircher@myfloridalegal.com and CapApp@MyFloridaLegal.com and U.S. Mail to Enoch D. Hall, DOC#214353, Florida State Prison, 7819 N.W. 228TH Street, Raiford, Florida 32026 on this 4th day of February, 2016.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Petition for Writ of Habeas Corpus was generated in Times New Roman 14-point font pursuant to Fla. R. App. P. 9.210.

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