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IN THE SUPREME COURT OF FLORIDA

ANTHONY FARINA, JR.,
Petitioner,

Case No.
Circuit Case No. :

v.

STATE OF FLORIDA,
Respondent

RECEIVED, 09/14/2015 06:53:45 PM, Clerk, Supreme Court

PETITION SEEKING REVIEW OF NONFINAL ORDER (Capital Case)

Pursuant to Fla. R. App. 9.142(b), Mr. Farina, by and through undersigned counsel, respectfully petitions this Court for Review of a Non-final Order from the Honorable Margaret W. Hudson, of the Circuit Court in and for the Seventh Judicial Circuit. Mr. Farina seeks an order from this Court directing the lower court to hold a case management conference, conduct an evidentiary hearing and rule on his successive motion for post-conviction relief pursuant to Florida Rule of Criminal Procedure 3.851.

BASIS FOR INVOKING JURISDICTION

This is an original action under Rule 9.412(b)(2) of the Florida Rules of Appellate Procedure. This Court has original jurisdiction pursuant to 9.030(a)(3) of the Florida Rules of Appellate Procedure and Article V, Sec. 3(b)(1) of the Florida Constitution. See *Trepal v. State*, 754 So. 2d 702 (Fla. 2000). However, should this Court determine that jurisdiction properly lies with the Fifth District Court of

Appeal, Mr. Farina respectfully requests that this Court enter an Order allowing him to file this Petition with that court.[1]

DATE AND NATURE OF ORDER SOUGHT TO BE REVIEWED

On, July 1, 2015, the lower court dismissed Mr. Farina's Successive Rule 3.851 Motion to Vacate Judgment of Conviction and Sentences as premature. The Order is attached as Exhibit A of the Appendix. Mr. Farina timely filed a motion for Rehearing. The lower court denied rehearing on August 13, 2015. The Order is attached as Exhibit B of the Appendix.

PROCEDURAL HISTORY

The Circuit Court of the Seventh Judicial Circuit, Volusia County, entered the judgments of conviction and sentence under consideration. Mr. Farina's Motion attacked, first, his judgment for first-degree murder and, second, his judgment and six consecutive life sentences for armed robbery, burglary, conspiracy to commit murder, and three counts of attempted first-degree murder. The Honorable Uriel Blount, Circuit Court Judge of the Seventh Judicial Circuit, Volusia County, Florida, entered Mr. Farina's judgments and sentences on December 16, 1992. On direct

[1] While Mr. Farina is no longer under a sentence of death, the State is still seeking to impose a death sentence. Therefore, Mr. Farina believes that Fla. R. Crim. Pro. 3.851 applies and that jurisdiction lies with this Court. However, should this court find that Fla. R. Crim. Pro. 3.850 applies, or the appeal lies more properly with the Fifth District Court of Appeal, Mr. Farina respectfully requests that this Court allow Mr. Farina to amend his pleading and/or be given leave to file in the Fifth District Court of Appeal.

appeal, this Court affirmed Mr. Farina's convictions but set aside his death sentence because, during the penalty phase of his trial, "the trial court erroneously excused for cause a prospective juror who was qualified to serve." *See Farina (Anthony) v. State*, 679 So. 2d 1151, 1157 (Fla. 1996) (*Farina I*). This Court vacated the death sentence of his co-defendant and brother, Jeffrey Farina, for similar reasons. *See Farina (Jeffrey) v. State*, 680 So. 2d 392, 396–99 (Fla. 1996). This Court then remanded the Farina brothers' respective cases for new sentencing proceedings. At the joint penalty proceeding held on remand, the Farina brothers were again sentenced to death. The Farina brothers each appealed their newly imposed death sentences. This Court vacated Jeffrey Farina's death sentence and imposed a life sentence on the basis of *Brennan v. State*, 754 So. 2d 1 (Fla. 1999). *See Farina (Jeffery) v. State*, 763 So. 2d 302 (Fla. 2000). This Court, with Justice Anstead concurring in part and dissenting in part, denied Mr. Farina's appeal in its entirety. *Farina v. State*, 801 So.2d 44 (2001).

On April 3, 2003, Mr. Farina filed a timely Rule 3.851 motion. The lower court denied that motion in its entirety. Mr. Farina timely appealed to this Court and contemporaneously filed a petition for state habeas corpus alleging ineffective assistance of counsel. According to Mr. Farina's petition, his appellate counsel—in a clear dereliction of duty—failed to raise the issue that the prosecution's numerous invocations of biblical commands in an attempt to hector the jury into imposing a

death sentence on Mr. Farina was deficient performance which prejudiced Mr. Farina. This Court – in a divided opinion - denied Mr. Farina's appeal and habeas petition. *See Farina v. State,* 937 So. 2d 612 (Fla. 2006)

Because this Court rejected his request for post-conviction relief, Mr. Farina sought relief in the federal courts by timely filing a petition for a writ of habeas corpus in the United States District Court for the Middle District of Florida. Mr. Farina's petition was denied. Mr. Farina appealed the district court's denial to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit granted Mr. Farina habeas relief. As the Eleventh Circuit concluded, the "prosecutor's injection of religious authority into a capital sentencing proceeding … diminished the jury's sense of responsibility in a way that undermined the reliability of its death recommendation" *Farina v. Sec'y, Fla. Dep't of Corr.*, 536 F. App'x 966, 968 (11th Cir. 2013), and the failure of Mr. Farina's appellate attorney "to raise the prosecutorial conduct claim fell below the standard of competence required by the Constitution." *Id*. at 984. On this ground, the Eleventh Circuit ruled that Mr. Farina had been unduly prejudiced by ineffective assistance of counsel, set aside his death sentence, and ordered a remand to the trial court for a new sentencing proceeding. *Id*. at 985. Although the State of Florida subsequently filed a petition for writ of *certiorari* seeking to overturn the Eleventh Circuit's decision, the

Supreme Court denied that petition. *See Crews v. Farina*, 135 S. Ct. 475 (Nov. 10, 2014).

Mr. Farina's case is currently pending before the lower Court. The State of Florida has stated that it again seeks a death sentence for Mr. Farina.

On May 11, 2015, Mr. Farina filed a Successive Motion to Vacate Judgment and Sentence pursuant to Fla. R. Crim. P. 3.851. The Motion to Vacate is attached as Exhibit C. In that Motion, Mr. Farina argued that newly discovered evidence uncovered in the wake of an anonymous tip conclusively demonstrates that Mr. Farina's convictions and sentences are the product of an unconstitutionally empaneled jury and thus must necessarily be vacated. In support of his Motion, Mr. Farina requested an evidentiary hearing to substantiate his claim of unconstitutional jury empanelment.

On July 1, 2015, without directing the State to respond and without conducting a case management conference, the lower court dismissed Mr. Farina's Motion as Premature. That order is attached as Exhibit B. Mr. Farina timely filed a Motion for Rehearing which is attached as Exhibit D. On August 13, 2015, the lower court denied rehearing. This appeal follows.

STATEMENT OF FACTS

The following facts are relevant to this Court's review of this Petition. On May 9, 2014, an anonymous person placed a letter in the mail in Orlando, Florida.

The letter was addressed to Mr. Farina's former trial counsel, William Hathaway, in New Smyrna Beach, Florida. Mr. Hathaway received the letter on May 12, 2014 and mailed it—along with a cover letter—the same day to Mr. Farina's current counsel, Garry Wood, Esq, in Palatka, Florida.

The letter from the anonymous person states in full:

> To whom it may concern:
>
> I write this with heavy hearth (sic). The Taco Bell murders were appalling but the treatment of Anthony Farina who did not injure or kill anyone is also appalling. He is guilty but the punishment is not justified. Life must be given.
>
> Because of inappropriate actions by the court, I am giving info for a new trial. The jury was handpicked. The jury foreman was a very best friend of Gus Sliger. Also on the jury was one of Gus Sliger's Party Chiefs Skip (nickname) Campbell. I suspect other connections to Gus Sliger. In other words, John Tanner had a handpicked jury with cooperation with those in charge of the jury notices.
>
> Explore this and you will find out.

Upon receipt of this letter, Mr. Wood timely reviewed the Record on Appeal from the November 1992 jury selection in Mr. Farina's trial. The record showed a "William Campbell" was seated as a juror in Mr. Farina's trial. In the course of the *voir dire*, Mr. Campbell stated he was a "party chief" on a surveying crew. 1992

ROA v.9 at 2012–13.[2] Later, when specifically asked by defense counsel, Campbell stated that he worked for Sliger & Associates in Port Orange, Florida. *Id*. at 2037. Mr. Wood then timely reviewed the contribution records for John Tanner. Mr. Tanner was the elected-state attorney but personally tried Mr. Farina's case in November of 1992. Those contribution records showed that Sliger & Associates donated a total of $750 in cash to Mr. Tanner's successful 1988 campaign for State Attorney and another $250 on June 1, 1992 when Tanner unsuccessfully sought re-election. [3] On August 7, 1992, Sliger & Associates also made a $130 in-kind donation of wood for Tanner's campaign signs.

At no point during the jury selection, trial, direct appeal, or post-conviction proceedings in Mr. Farina's case, however, did Mr. Tanner disclose his relationship with Gus Sliger.[4] Nor did Mr. Tanner disclose Sliger & Associates' donations to his 1988 and 1992 campaigns. And Mr. Campbell certainly did not disclose this information. Nor did Mr. Durant reveal his close friendship with Mr. Sliger. The

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[2] A Survey Party Chief "heads up a field survey crew, which is responsible for creating surveys for construction, topographic, right-of-way, and control survey tasks." *See* http://www.wisegeek.com/what-does-a-survey-party-chief-do.htm (last visited May 10, 2015).

[3] Tanner was elected State Attorney in 1988 but lost in the 1992 Republican primary by 54 votes. *See http://articles.orlandosentinel.com/1993-01-04/news/9301040331_1_john-tanner-morality-video-stores*. (Last visited May 6, 2015). Tanner would go on to successfully seek re-election in 1996.

[4] Gustave Sliger died at the age of 46 in a November 1995 motorcycle accident in North Carolina.

men failed to disclose this information notwithstanding that they knew or should have known that similar relationships were recorded grounds for striking two prospective jurors—jurors Daniels and Kingree—from Mr. Farina's panel.

Juror Daniels. Over the course of *voir dire*, Mr. Farina's defense counsel, Thomas Mott, repeatedly asked the panel—and individual jurors—whether they had any friends, relatives, or neighbors who worked in law enforcement or the court system. ROA V.5 at 1078, 1268, 1319–20. Presumably in response to those questions, Ms. Daniels informed the Court that her family had "business dealings with Mr. Tanner's family," and that her "family business has small business dealings with Mr. Tanner's family." *Id*. at 1339. When Mr. Mott exercised a cause challenge, Mr. Tanner responded, "Well, your honor, my family and I deal with half the merchants in the communities. If that's grounds to excuse them we might not get a jury." *Id*. at 1339-40. Judge Blount agreed and denied the cause challenge. *Id*. at 1340. Mr. Mott continued to question other jurors, asking them if they had participated in the political campaign of a particular candidate (*id*. at 1357), or if they had any friend "in the court system" (*id*. at 1359). Mott then renewed his cause challenge of Ms. Daniels because of her family's connections to Mr. Tanner's family, but the Court again denied his challenge. *Id*. at 1365–67. Mr. Mott then used a peremptory strike to remove Ms. Daniels. *Id*. at 1367.

Juror Kingree. Ms. Kingree advised the court that her daughter had worked for Mr. Tanner. Upon further questioning, Ms. Kingree also disclosed that she had supported Mr. Tanner in his political campaign. *Id*. at 1802–03. Mr. Mott then moved to strike Ms. Kingree for cause because she "actively supported Tanner in his political campaign." *Id*. at 1812. The court granted the cause challenge. *Id*.

Post-Strike Questioning. Following Ms. Kingree's dismissal from the panel, Mr. Mott again asked the panel if they had ever supported a particular candidate for public office. *Id*. at 1940–41, 1769, 1787, and 2006. Mr. Campbell—among the last jurors to be questioned as part of the panel and during individual *voir dire*—at no time disclosed Sliger & Associates' direct support of Mr. Tanner's 1988 and 1992 campaigns for State Attorney.

ARGUMENT

THE LOWER COURT'S DENIAL OF MR. FARINA'S 3.851 MOTION WITHOUT CONDUCTING A CASE MANAGEMENT CONFERENCE AND THE COURT'S DETERMINATION THAT THE MOTION IS PREMATURE IS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW.

The lower court's order denying Mr. Farina's Successive Motion for Post-Conviction Relief is a departure from the essential requirements of law. In order to obtain relief, Mr. Farina must also show that there is a material injury for which there is no adequate remedy on appeal. *Trepal v. State*, 754 So. 2d 702, 707 (Fla. 2000); Fl. R. App. P. 9.412(3)(F).

Material Injury and Necessity for Trial Court to Rule

The lower court's order essentially renders Mr. Farina's right to challenge his underlying convictions, which formed the basis of his two prior death sentences, through collateral attack pursuant to Florida Rule of Criminal Procedure 3.851 meaningless. The court's ruling forces Mr. Farina to be placed in jeopardy of a third death sentence based on convictions that were rendered by a bias jury selected in an unconstitutional process. And, the lower court's ruling is an unwise use of judicial resources as this Court's own precedent suggests that this Court would remand for the lower court to rule prior to addressing any direct appeal.

If this Court upholds the lower court's denial, the matter cannot be remedied on appeal because Mr. Farina will have already been placed in jeopardy of receiving a death sentence based on unconstitutionally obtained prior, albeit contemporaneous conviction. Further, the denial of his 3.851 motion, denies Mr. Farina a full and fair adversarial testing of his conviction and any death sentence if the State of Florida is once again successful, and deprives him of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendment under federal law and the corresponding provisions of the Florida Constitution. The lower court's order is a departure from the essential requirements of the law as it renders Mr. Farina's rights under 3.851 meaningless.

And, in similar situations, this Court has remanded cases back to the trial court to rule on post-conviction motions prior to ruling on a direct appeal of a new death sentence. In *Way v. State*, 630 So. 2d 177 (Fla. 1993), this Court required the lower court to conduct a hearing on a post-conviction motion based on newly discovered evidence of a *Brady* violation before it would consider Way's direct appeal. This Court stated:

> There has been no evidentiary determination of whether there was an improper withholding of the photographs and whether, even if there was, it would have affected the outcome of Way's trial. We are unable to conclusively determine from the record that this "new" evidence could not support an alternative theory of the deaths of his wife and daughter and provide a basis on which a jury could find him innocent.
>
> Accordingly, we reverse the summary denial of the motion for post conviction relief and remand to the circuit court for an evidentiary hearing on Way's allegations. We ask the parties promptly to advise this Court of the outcome of the evidentiary hearing because we have determined to withhold ruling on Way's direct appeal from resentencing until that time.

Way v. State, 630 at 178-79. If this Court does not require the trial court to conduct a case management conference and evidentiary hearing on Mr. Farina's Successive Motion, this Court will be unable to address his direct appeal should he once again be sentenced to death.

The Lower Court Departed from the Essential Requirements of the Law When It Ruled on Farina's Motion without Requiring the State to Respond and Without Conducting a Case Management Conference

The lower court determined that Mr. Farina's claim was premature because the "United States Court of Appeals for the Eleventh Circuit has set aside Defendant's sentence of death and has remanded Defendant's case for a new sentencing proceeding." Mr. Farina respectfully submits, however, that the lower court's ruling was both procedurally and substantively flawed and resulted in a departure from the essential requirements of the law.

The lower court's ruling is procedurally flawed because the statutorily required process for disposing of Mr. Farina's motion was not followed. Rule 3.851 provides that "[w]ithin 20 days of the filing of a successive motion, the state *shall* file its answer. . . . The answer shall specifically respond to each claim in the motion and state the reason(s) that an evidentiary hearing is or is not required." Fla. R. Crim. P. 3.851(f)(3)(B) (emphasis added). Rule 3.851 further provides that when a successive motion for relief is filed, "[w]ithin 30 days after the state files its answer to a successive motion for post-conviction relief, the trial court *shall* hold a case management conference." Rule 3.851(f)(5)(B) (emphasis added). The use of the word "shall" is interpreted as imposing a mandatory requirement on the state to answer in writing and for the trial court to conduct a case management conference.

Mr. Farina respectfully requests that this Court order the lower court to require the State to respond and conduct a Case Management Conference within thirty days after the State has filed its Response. Failing to require the State to answer and to conduct a case management conference deprived Mr. Farina of notice of the process and the right to be meaningfully heard on his claim. And, thus, the lower court departed from the essential requirements of the law.

The touchstone of due process is "'notice and opportunity for hearing appropriate to the nature of the case.'" *Cleveland Bd. Of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985), quoting *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).* Rule 3.851's requirement that the State respond and that the lower court conduct a case management conference assures Mr. Farina a fundamentally fair proceeding, where he will be put on notice as to any arguments by the State and is given an opportunity to respond and set forth his position and legal argument and provide this Court a record with which it could fairly assess Mr. Farina's claim. *See Huff v. State*, 622 So. 2d 982 (Fla. 1993) (the failure to conduct a hearing "leaves the impression that Huff's arguments were not considered.")

Although the lower court dismissed Mr. Farina's motion without prejudice, it is absolutely vital to the constitutionality of his resentencing that the claims he raised in his motion be heard prior to the commencement of his resentencing trial.

Mr. Farina was convicted in this case not only of first-degree murder, but additional felonies in the Indictment which include three counts of attempted first-degree murder, one count of armed burglary, and one count of burglary with an assault. At Mr. Farina's upcoming sentencing proceedings, the State will surely rely on these convictions as aggravating circumstances pursuant to Fla. Stat. 921.141(5)(b) and (d).

These additional convictions are, in fact, final, as Mr. Farina does not face resentencing on them. Thus, while the lower court's ruling dismissed Mr. Farina's Motion without prejudice, it places him in jeopardy of receiving a death sentence utilizing aggravating circumstance (i.e., additional convictions under the same Indictment herein), which were obtained in violation of Mr. Farina's State and federal Constitutional rights. *See Clemons v. Mississippi,* 494 U.S. 738 (1990) and *Stringer v. Black*, 503 U.S. 222 (1991).

Requiring Mr. Farina to proceed to a capital sentencing trial, during the course of which evidence of prior, albeit contemporaneous, convictions will be introduced as support for a finding of death, without giving Mr. Farina the opportunity to demonstrate that the convictions themselves were likely obtained in violation of Mr. Farina's rights, undermines the reliability of any resulting sentence of death. Any such future death sentence would necessarily then have been unreliably obtained in violation of Mr. Farina's Fifth, Sixth, Eighth and Fourteenth

Amendment rights, including the right to challenge the convictions upon which his death-sentence was premised.

The finality of death creates a "qualitative difference" between a sentence of death and any other punishment, including life in prison. That finality creates a "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) (plurality opinion).

This is particularly so in a case such as this, where it is difficult to conceive that Mr. Farina, who was only 18 years old at the time of the offense and who was not the triggerman, is in the class of offenders "'who commit a narrow category of the most serious crimes *and whose extreme culpability makes them the most deserving of execution*.'" *Glossip v. Gross*, --- , Slip Op., p. 10 (Breyer, J., dissenting)(quoting *Kennedy v. Louisiana,* 554 U.S. 407, 420 (2008))(internal quotation marks omitted) (emphasis added). Mr. Farina's case is one of the cases which "40 years of experience make . . . increasingly clear that the death penalty is imposed arbitrarily, i.e., without the 'reasonable consistency' legally necessary to reconcile its use with the Constitution's commands." *Glossip v. Gross*, --- , Slip Op., p. 10 (Breyer, J., dissenting) (quoting *Eddings v. Oklahoma,* 455 U.S. 104, 112 (1982)).

In addition to the procedural flaws described above, the lower Court's ruling is substantively flawed. The court dismissed Mr. Farina's motion as untimely because Mr. Farina is now subject to re-sentencing for his first-degree murder conviction. But Mr. Farina does *not* face resentencing for his additional convictions for armed robbery, burglary, conspiracy to commit murder, and three counts of attempted first-degree murder. Because Mr. Farina does not face resentencing for these additional convictions, these convictions are "final" for purposes of a successive post-conviction motion. Mr. Farina's challenges to these convictions were thus timely presented under Rule 3.851 and should be addressed now.

The Underlying Claim is Meritorious and Warrants a Hearing

The Constitution guarantees a criminal defendant the right to an impartial jury. *Parker v. Gladden*, 385 U.S. 363, 364 (1965). "In essence, the right to a jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process." *Turner v. Louisiana*, 379 U.S. 466, 471 (1965) (citing *In re Oliver*, 333 U.S. 257 (1948); *Turney v. Ohio*, 273 U.S. 510 (1927)). "This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies." *Id*. *Voir dire* is a means of protecting a defendant's right to a fair trial by an impartial jury. *See*

McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 554 (1984); *cf. Turner v. Murray*, 476 U.S. 28, 36–37 (1986) (plurality opinion).

To obtain a new trial based on lack of candor during *voir dire*, "a party must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause. The motives for concealing information may vary, but only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial." *McDonough Power Equip.*, 464 U.S. at 556. "[T]here is a 'miscarriage of justice' when a party is precluded from the opportunity of having a juror excused for cause or of excusing such juror peremptorily by reason of a material concealment by the juror of a fact sought to be elicited on *voir dire* where the failure to discover the concealment is not through want of diligence by the complainant." *Skyles v. Ryder Truck Lines, Inc.*, 267 So. 2d 379 (Fla. 2d DCA 1972). A defendant is entitled to an evidentiary hearing to establish a biased juror was seated and that the prosecutor's failure to disclose the nature of his relationship with the juror denied him his due process rights. *Cf. Jones v. State*, 591 So. 2d 911, 916 (Fla. 1991); *cf. Williams v. Taylor*, 529 U.S. 420 (2000); *Williams v. True*, 39 F. App'x 830, 833–4 (4th Circuit 2002) (unpublished opinion).

Under Florida law, a defendant must satisfy two requirements to obtain relief based on newly discovered and otherwise admissible evidence. First, the defendant must assert facts that were "unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known them by the use of diligence." *Jones*, 591 So. 2d at 915 (quoting *Hallman v. State*, 371 So. 2d 482, 485 (Fla. 1979)); Fla. R. Crim. P. 3.851(d)(2)(A). Second, the defendant must show that "the newly discovered evidence [is] of such nature that it would probably produce an acquittal on retrial." *Jones*, 591 So. 2d at 915. The *Jones* standard is also applicable where "the issue [is] whether a life or a death sentence should have been imposed." *Id*. Mr. Farina's claim is analogous to a *Jones* claim, but the prejudice standard must necessarily be different because the issue before this Court is different than that which faced the this Court in *Jones*: Mr. Farina need not demonstrate that he would have been acquitted but for the empanelment of the biased juror; rather, he must show, as *per McDonough*, that the revelation of the previously concealed information "would have provided a valid basis for a challenge for cause." *McDonough Power Equip.*, 464 U.S. at 556.

In Mr. Farina's case, the evidence discussed *supra* certainly qualifies as "newly discovered evidence," because this evidence was "unknown by the trial court, by the party, or by counsel at the time of trial, and [could not] have [been]

known [to] them by the use of diligence." *Jones*, 591 So. 2d at 915. Defense counsel could not have known or suspected that a juror would fail to disclose his relationship with the prosecutor. Nor could defense counsel have known or suspected that the prosecutor, an officer of the court, would fail to disclose that a prospective juror was a contributor—as a result of being a high-ranking employee of a local, small business—to the prosecutor's political campaigns, or, at the very least, that the juror's direct employer was a political supporter of the prosecutor's political campaigns—including the one that had concluded shortly before Mr. Farina's trial.

Furthermore, the existence of political relationships linking the juror to the prosecutor could not have been discovered through the exercise of due diligence within a year of Mr. Farina's sentences becoming final. *See* Fla. R. Crim. P. 3.851(d)(5). Mr. Farina's counsel could not reasonably have been expected to comb election contribution records on the off-chance that there was an undisclosed relationship between a juror and the prosecutor. And the prosecution should not be allowed to benefit from its misconduct in failing to disclose these troubling relationships. It was not until counsel received the anonymous letter described *supra* that counsel could reasonably have been expected to investigate whether the juror and the prosecutor failed to be candid with the tribunal and disclose the nature of their connection. Counsel conducted a timely and diligent investigation

after receiving the anonymous letter and filed this pleading less than a year after confirming the letter's tip. *See id*.

Furthermore, it is evident that the relationship between Mr. Campbell and Mr. Tanner "would have provided a valid basis for a challenge for cause" (*McDonough Power Equip.*, 464 U.S. at 556), because Ms. Kingree was permissibly struck from the panel on the basis of a similar relationship with Mr. Tanner. And there is no question that the seating of a biased juror is fundamental constitutional error that can be raised at any time and would have resulted in a new trial for Mr. Farina.

On these grounds, Mr. Farina has made a sufficient showing to entitle him to a hearing on this matter. This Court should order the lower court to conduct a hearing prior to any re-sentencing trial.

CONCLUSION AND RELIEF SOUGHT

Mr. Farina respectfully petitions this Court for an Order directing the lower court to conduct a case management conference and an evidentiary hearing and rule on the merits of his 3.851 Motion.

Respectfully Submitted,

/s/Garry Wood
Garry Wood
/s/Marie-Louise Samuels Parmer
Marie-Louise Samuels Parmer

Attorneys for Petitioner

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing petition has been served using the Florida Courts e-filing portal upon Ed Davis, Assistant State Attorney, and by U.S. Mail on the Honorable Margaret W. Hudson on this 14th day of September, 2015.

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