

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC15-1884**

---

**LOUIS B. GASKIN,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee.**

---

**ON APPEAL FROM THE SEVENTH CIRCUIT COURT  
OF THE JUDICIAL CIRCUIT,  
IN AND FOR VOLUSIA COUNTY, STATE OF FLORIDA**

---

**REPLY BRIEF OF APPELLANT**

---

**Eric Pinkard  
Chief Assistant CCRC-MIDDLE  
Florida Bar No. 0651443  
CAPITAL COLLATERAL REGIONAL  
COUNSEL-MIDDLE  
3801 Corporex Park, Suite 210  
Tampa, Florida 33619  
(813) 740-3544**

## **PRELIMINARY STATEMENT**

Appellant appeals the circuit court's denial of his successive motion for post-conviction relief prosecuted pursuant to Rule 3.851, Florida Rules of Criminal Procedure. The proceedings in his case will be cited to as follows:

“R.” - record on direct appeal;

“R2.” - record on direct appeal from remand;

“PC-R.” - record of post-conviction proceedings.

“PC2-R.” - record of successive post-conviction proceedings

When the direct appeal opinions of this Court are referred to after the initial cite in the procedural history, they will be referenced as Gaskin.

**TABLE OF CONTENTS**

	Page
PRELIMINARY STATEMENT.....	ii
TABLE OF AUTHORITIES.....	iii
ISSUE. ....	1
THE LOWER COURT ERRED IN DENYING MR. GASKIN’S SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF.....	1
CONCLUSION AND RELIEF SOUGHT. ....	3
CERTIFICATE OF SERVICE. ....	4
CERTIFICATE OF COMPLIANCE.....	5

**TABLE OF AUTHORITIES**

<i>Clemons v. Mississippi</i> , 494 U.S. 738, 110 S.Ct. 1441, 108 L.Ed.2d 725 (1990).....	1
<i>Sochor v. Florida</i> , 504 U.S. 527, 112 S.Ct. 2114, 119 L.Ed.2d 326 (1992).....	1

## ISSUE

### **THE LOWER COURT ERRED IN DENYING MR. GASKIN'S SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF**

The appellee's answer brief does not change two essential facts which entitle Mr. Gaskin to relief:

1. This Court struck two aggravating circumstances relied upon by the lower court in the sentencing order.

2. No harmless error analysis was conducted as required by *Clemons v. Mississippi*, 494 U.S. 738, 110 S.Ct. 1441, 108 L.Ed.2d 725 (1990). This Court failed to apply a constitutional standard of harmless error review when it declined to remand for resentencing after striking two of the aggravating circumstances found by the trial court.

In *Clemons*, the Court held that a state appellate court may constitutionally uphold a death sentence that is based in part on an invalid or improperly defined aggravating circumstance, provided that the decision is reached "either by reweighing of the aggravating and mitigating evidence or by harmless error review." 494 U.S. at 741, 110 S.Ct. at 1444.

Two years after *Clemons*, the Supreme Court gave its holding further form in a Florida capital case, *Sochor v. Florida*, 504 U.S. 527, 112 S.Ct. 2114, 119 L.Ed.2d 326 (1992). In *Sochor*, the Court held that the Florida Supreme Court's

consideration of a death sentence did not cure the trial court's erroneous consideration of an aggravating factor since the appellate court “did not explain or even ‘declare a belief that’ this error ‘was harmless beyond a reasonable doubt’ in that ‘it did not contribute to the [sentence] obtained.’”

Vacating Mr. Gaskin's two remaining death sentences in this case is mandated because two aggravating circumstances were improperly considered and the Florida Supreme Court did not cure the error by declaring the error was harmless beyond a reasonable doubt.

Contrary to the argument of the Appellee, this claim is not untimely. The successor post-conviction motion was filed within one year of when the lower court finally vacated Mr. Gaskin’s two felony murder convictions. On August 12, 2014, the circuit court judge vacated the felony murder adjudications and resultant death sentences set forth in Counts II and IV of the indictment. PC2. 81-82.

In order for this Court to be in compliance with clearly established federal law emanating from the United States Supreme Court in the *Clemons* case, a harmless error analysis must be conducted when aggravating circumstances are stricken. The appellee’s brief makes no effort to argue against the effect of the *Clemons* case. Accordingly, Mr. Gaskin is entitled to relief.

## **CONCLUSION AND RELIEF SOUGHT**

Based on the foregoing, the lower court improperly denied Mr. Gaskin's Successive 3.851 motion. This Court should order that his sentence be vacated and remand the case for a new sentencing, new evidentiary hearing, or for such relief as the Court deems proper.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Florida Supreme Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Scott Browne, Assistant Attorney General, [scott.browne@myfloridalegal.com](mailto:scott.browne@myfloridalegal.com), [capapp@myfloridalegal.com](mailto:capapp@myfloridalegal.com); Rosemary Calhoun, Assistant State Attorney, [calhounr@sao7.org](mailto:calhounr@sao7.org), [eservicemarion@sao7.org](mailto:eservicemarion@sao7.org); and by U.S. mail to Louis Gaskin, DOC# 751166, Union Correctional Institution, 7819 NW 228<sup>th</sup> Street, Raiford, FL 32026, today, January 12, 2016.

/s/ Eric C. Pinkard  
Eric C. Pinkard  
Florida Bar No. 651443  
Chief Assistant CCRC  
Capital Collateral Regional Counsel –  
Middle  
3801 Corporex Park Drive, Suite 210  
Tampa, Florida 33619-1136  
813-740-3544  
Attorney for Defendant  
[Gemmer@ccmr.state.fl.us](mailto:Gemmer@ccmr.state.fl.us)  
[Support@ccmr.state.fl.us](mailto:Support@ccmr.state.fl.us)

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that a true copy of the foregoing Initial Brief, was generated in Times New Roman, 14-point font, pursuant to Fla. R. App. P. 9.210.

/s/ Eric C. Pinkard  
Attorney for Defendant