IN THE SUPREME COURT OF FLORIDA

CASE NO. SC17-1725

JOHN WILLIAM CAMPBELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF FIFTH JUDICIAL CIRCUIT FOR CITRUS COUNTY, STATE OF FLORIDA
Lower Tribunal No. 2010-CF-1012

REPLY BRIEF OF APPELLANT

Julie A. Morley
Florida Bar No. 0085158
Margaret S. Russell
Florida Bar No. 72720
Assistant CCRCs
Law Office of the Capital Collateral
Regional Counsel-Middle Region
12973 N. Telecom Parkway
Temple Terrace, Florida 33637-0907
(813) 558-1600

Counsel for Appellant

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STANDARD OF REVIEW 1

ARGUMENT I: THE CIRCUIT COURT ERRED IN DENYING MR. CAMPBELL'S CLAIM THAT HIS INITIAL CONFESSIONS AND *MIRANDA* WAIVERS WERE INVOLUNTARY DUE TO TRAUMA, MEDICATIONS AND POLICE MISCONDUCT, AND THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO SUPPRESS THOSE STATEMENTS, DEPRIVING MR. CAMPBELL OF RIGHTS SECURED BY THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION 3

ARGUMENT II: THE TRIAL COURT ERRED IN DENYING MR. CAMPBELL'S CLAIM THAT TRIAL COUNSEL PROVIDED PREJUDICAL INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO PROVIDE PROMPT ASSISTANCE AND ERRED IN EXCLUDING THE TESTIMONY OF A DEFENSE EXPERT AT THE EVIDENTIARY HEARING IN SUPPORT OF THIS CLAIM 13

CONCLUSION 19

CERTIFICATE OF SERVICE 20

CERTIFICATE OF COMPLIANCE 21

TABLE OF AUTHORITIES

Page

Cases

Brady v. United States, 397 U.S. 742 (1970) 4

DeConingh v. State, 433 So. 2d 501 (Fla. 1983) 4

King v. State, 211 So. 3d 866 (Fla. 2017).....2

Lindsey v. State, 66 Fla. 341, 63 So. 832 (Fla. 1913).....4

Reddish v. State, 167 So. 2d 858 (Fla 1964).....5

Rodgers v. State, 113 So. 3d 761 (Fla. 2013) 2

Sochor v. State, 883 So. 2d 766 (Fla. 2004) 1

Strickland v. Washington, 466 U.S. 668 (1984) 1, 13

Wiggins v. Smith, 539 U.S. 510 (2003).....8

Williams v. Taylor, 529 U.S. 362 (2000).....2

PRELIMINARY STATEMENT

Mr. Campbell relies on all of the arguments already presented in his Initial Brief. While Mr. Campbell will not reply to every issue and argument raised by the Appellee, he expressly does not abandon the issues and claims not specifically replied to herein.

STANDARD OF REVIEW

Under *Strickland v. Washington*, 466 U.S. 668 (1984), ineffective assistance of counsel claims are a mixed question of law and fact; with the lower court's legal rulings reviewed *de novo* and deference given to factual findings supported by competent and substantial evidence. *Sochor v. State*, 883 So. 2d 766, 772 (Fla. 2004). Several claims of ineffective assistance have been raised. General case law will be addressed here.

The United States Supreme Court has held that counsel has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. *Strickland*, 466 U.S. at 688. Specifically, counsel has a duty to investigate in order to make the adversarial testing process work in the particular case. *Id.* at 690. There are two prongs to an ineffective assistance of counsel claim.

> First, a petitioner must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's

> errors were so serious as to deprive the defendant of a fair trial, whose result is unreliable.

Id. at 687. To establish deficient performance, a petitioner must demonstrate that counsel's representation "fell below an objective standard of reasonableness." *Id.* at 688. In order to show prejudice, it is not necessary to establish that counsel's deficient conduct more likely than not altered the outcome in the case. *Id.* at 693. Instead, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. The court evaluates the totality of the evidence "both that adduced at trial, and the evidence adduced in the habeas proceeding[s]." *Williams v. Taylor*, 529 U.S. 362, 397-398 (2000).

This Court employs a mixed standard of review in post-conviction matters, deferring to the circuit court's factual findings that are supported by competent, substantial evidence, but reviewing legal conclusions de novo. *King v. State*, 211 So. 3d 866, 880 (Fla. 2017); *Rodgers v. State*, 113 So. 3d 761, 767 (Fla. 2013); *Sochor*, 883 So. 2d at 772. Despite this deference to a trial court's findings of fact, the appellate court's obligation to independently review mixed questions of fact and law of constitutional magnitude is also an extremely important appellate principle.

Stephens v. State, 748 So. 2d 1028, 1034 (Fla. 1999). This Court has an obligation to carefully review the circuit court's findings to ensure that Mr. Campbell received the effective assistance of counsel and due process to which he is entitled under state and federal law.

ARGUMENT I

THE CIRCUIT COURT ERRED IN DENYING MR. CAMPBELL'S CLAIM THAT HIS INITIAL CONFESSIONS AND *MIRANDA* WAIVERS WERE INVOLUNTARY DUE TO TRAUMA, MEDICATIONS AND POLICE MISCONDUCT, AND THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO SUPPRESS THOSE STATEMENTS, DEPRIVING MR. CAMPBELL OF RIGHTS SECURED BY THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION

Mr. Campbell's Statements to Law Enforcement were Involuntary

Trial counsel rendered prejudicial ineffective assistance of counsel under *Strickland* for failing to file a motion to suppress because Mr. Campbell's statements were involuntary due to trauma, medications and police misconduct. Mr. Campbell was legally impaired by opiates during each of his five interrogations by law enforcement. His counsel never attempted to suppress any of the five statements he made while he was under the influence of Diprivan, Morphine, and Oxycodone. Trial counsel also never consulted with an expert pharmacologist who would have discovered Mr. Campbell's impairment during each interrogation. Since there was no

other evidence presented at trial to suggest premeditation, aside from Mr. Campbell's drugged confessions, counsel's errors were grievously prejudicial.[1]

In *DeConingh v. State*, 433 So. 2d 501 (Fla. 1983), *cert. denied* 465 U.S. 1005 (1984), the Florida Supreme Court held that, "waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Id*. at 503 (holding that the defendant's statements, which was made while she was hospitalized and on medication, should be suppressed because it was not voluntary), citing *Brady v. United States*, 397 U.S. 742, 748 (1970). Confessions given while under the influence should be suppressed when "the confessor is intoxicated to the degree of mania or is unable to understand the meaning of his statements." *Id.* (citing *Lindsey v. State*, 66 Fla. 341, 63 So. 832 (Fla. 1913)). Florida Standard Jury Instructions reflect these constitutional protections: jurors must disregard a defendant's statement if it is not

[1] Appellee argues "Campbell's allegations that his statements to law enforcement were involuntary and should have been suppressed are procedurally barred from consideration because the issue could have been raised on direct appeal." Answer Brief, p. 15, ft. 3. However, the issue before this Court is the prejudicial ineffective assistance of counsel for failing to file a motion to suppress. Trial counsel never filed a motion to suppress challenging Mr. Campbell's statements, thus the issue regarding the voluntariness of those statements could not have been brought up on direct appeal due to lack of preservation. This claim is not procedurally barred and proper for postconviction litigation.

freely and voluntarily made. F.S. Std. Crim. Jury Instr., 3.9(b). Likewise, in *Reddish v. State*, 167 So. 2d 858, 863 (Fla. 1964), confessions from a critically injured man on narcotics were deemed to be not freely and voluntarily made.

The Appellee makes several arguments about why Mr. Campbell's statements were made freely and voluntarily. Each argument, however, is contradicted by the evidence found in the record on appeal from both the guilt phase trial and the postconviction evidentiary hearing. First, Appellee argues that Dr. O'Donnell testified that he listened to Mr. Campbell's interviews with law enforcement and that there was nothing in Mr. Campbell's statements to conclude that he did not understand the questions asked of him or that he had any difficulty communicating with law enforcement. Answer Brief, p. 17. However, pharmacology expert, Dr. O'Donnell[2], noted that impairment does not mean one cannot communicate at all. People who are impaired by opiates can still use words, be coherent, "say a prayer, they could say their Our Father. They could say the alphabet." PC/944. Someone who is impaired by narcotics would not necessarily be in a rage or hysterics. In fact,

[2] The Appellee also incorrectly states that "Dr. O'Donnell admitted that he had never testified on the behalf of the prosecution." Answer Brief, p. 3. This is an inaccurate statement of the facts. Dr. O'Donnell stated that although he has never testified for the State in a capital case, he has testified multiple times for the State in other criminal cases. PC/943.

hysteria and rage are considered "idiosyncratic and paradoxical reactions to opiates" because opiates are downers so one would not typically expect hysteria. PC/944-45.

The more significant issue with impairment is that a person cannot make rational, reasoned decisions. Individuals under the influence by the same amounts of narcotics as provided to Mr. Campbell during each of his five interrogations are "not able to deliberate. They're not able to decide. They make bad decisions . . . They don't consider the consequences of answering the questions and . . . waiving a right." PC/938. These drugs would have impaired Mr. Campbell, interfered with his ability to think clearly and appreciate consequences as they cause clouded thinking, suspended judgement, confusion, amnesia, hallucinations, disorientation, memory problems, enhanced impulsivity, impaired executive function and impaired deliberation. *See* Defense Exhibit G; PC/919. And while these individuals "can read the words, they can recite the words . . . they can't put it together in their head." PC/946.

Dr. O'Donnell testified that he would never recommend that an opiate naïve patient, like Mr. Campbell, make decisions under the influence of Diprivan, morphine, or high-dose oxycodone because "[t]hey cannot make decisions . . . they can't deliberate clearly . . . the connections are not there. These drugs inhibit the ability to make decisions and people make bad decisions because they're not

exercising judgment, they're not exercising controls. They're not calling on – on their background . . . there are disconnects." PC/22-23.

The Appellee also alleges that "[a]ccording to the doctor's own testimony, the Appellant's pain could have been counteracting the effects of the drugs." Answer Brief, p. 18. This allegation is simply not supported by the record and the Appellee does not provide any citation to support this argument. During the conclusion of Dr. O'Donnell's testimony, the trial judge posed a hypothetical scenario about a patient with Stage 4 bone cancer who was taking high dose opiate medications. PC/939-40. The trial court asked the defense expert whether that hypothetical person could make an "informed decision" under the influence of those narcotics. Dr. O'Donnell stated that the patient is simply making a "decision." Dr. O'Donnell went on to elaborate that the question is "whether they're . . . impaired" because "one of the things that pain does is it overcomes the effect for the toxicities of morphine." PC/939-40. Dr. O'Donnell noted that without more information, he is not in a position to medically asses that hypothetical person. However, he did note that unlike Mr. Campbell, the hypothetical cancer patient "is likely to be opiate tolerant and been on high doses for a long period of time." PC/939-40. The trial court did not ask any additional questions on the matter and did not inquiry of Dr. O'Donnell whether the narcotics given to Mr. Campbell had or could have had any counteracting effects on him. Thus, there is

simply nothing in the record to support Appellee's contention that Mr. Campbell's was counteracting the effects of the prescribed drugs. Rather, one could assume the opposite. Since Dr. O'Donnell previously opined that Mr. Campbell was opiate naïve, any counteracting effects from his pain would have been minimal or not occurred at all.

Finally, the Appellee's argument that all the medications given to Mr. Campbell were normal dosages for each drug is misleading. Answer Brief, p. 17. Although the medication dosages were "normal" they were nonetheless very high dosages. Mr. Campbell was under the influence of high-dose morphine on August 13th when he provided two confessions to law enforcement. He was given morphine at "eight milligrams every hour as needed and he was given doses at 5:00, 10:00, 6:15, 9:40, and 10:55." PC/919. On August 16th, Mr. Campbell was given oxycodone in two different forms: a continuous release high-dose oxycodone product and an immediate release oxycodone. Dr. O'Donnell testified "[t]hese circumstances of getting 40 milligrams of oxycodone in that three-hour period" is described as "high-dose oxycodone" because the baseline of the average dose for oxycodone is a 5-milligram tablet. PC/921. During each interrogation, Mr. Campbell was taking strong, high-dose opiates. The high levels of narcotics Mr. Campbell was on only

increased the drugs' side effects of cognitive impairment, including impaired deliberation, consideration, and judgement. PC/1929-31.

It was Unreasonable Strategy for the Trial Attorneys Not to File a Motion to Suppress Statements

The Appellee argues that regardless of whether this Court finds Mr. Campbell's statements voluntary, the trial attorneys' decision not to file a motion to suppress was reasonable strategy. Answer Brief, p. 18. However, strategic decisions must still be based on informed judgment of ***all*** the facts. "[T]he principal concern . . . is not whether counsel should have presented a mitigation case. Rather, [the] focus [should be] on whether the investigation supporting counsel's decision not to introduce mitigating evidence . . . was itself reasonable." *Wiggins v. Smith*, 539 U.S. 510, 523 (2003).

In this case, the trial attorneys could not have made an informed judgment because they simply did not have all of the facts necessary to do so. Although Attorney Lamberti immediately recognized that impairment might be an issue with Mr. Campbell's interrogations and memorialized these concerns after his first meeting with Mr. Campbell, he never followed up on this concern.[3] PC/963. Mr.

[3] Defense Exhibit H at the evidentiary hearing was Mr. Lamberti's handwritten notes after his first encounter with Mr. Campbell: "[a]pparently CCSO interviewed

Lamberti thought that Mr. Campbell's medical records were obtained by "someone" but never reviewed them personally. PC/982-83. Although Attorney Sharkey did obtain Mr. Campbell's medical records, he simply asked his personal sports-medicine doctor, Marc Hilgers, to review them. PC/1000. However, Attorney Sharkey admitted that Dr. Hilgers was not an expert in pharmacology and stated that "if we were going in that direction, I certainly would have retained a toxicologist. I wasn't going to rely on Dr. Hilgers' opinion." PC/1001. Attorney Sharkey conceded that the worst evidence in the case was Mr. Campbell's fifth statement taken at the Citrus County Jail on August 16th. PC/1003, 1018. Mr. Sharkey stated that their "strategy" was that Mr. Campbell had to take the stand at the guilt phase trial to counter this statement in particular. PC/1019.

The undisputed facts in this case show that the trial attorneys never hired a toxicologist or a pharmacologist to review Mr. Campbell's extensive medications during August 12, 13, and 16, including significant doses of Diprivan, Morphine, and High Dose Oxycodone. By failing to hire a qualified expert, trial counsel also never learned a critical fact revealed in the postconviction hearing: Mr. Campbell has an unusual sensitivity to opiates since he is "opiate naive." PC/897-99. By failing to hire

---

him at the hospital while he was on painkillers. He says he had to be extubated in order to have them talk to him." PC/963.

a qualified expert, trial counsel never learned the effects that each of these narcotics has on Mr. Campbell in particular and that he was impaired during all five confessions. Thus, trial counsels' "strategic" decision was based purely on speculation that they could not get the fifth statement suppressed. This Court cannot assess whether counsel made a reasonable strategic decision not to file a motion to suppress statements because counsel did not take all the necessary steps in order to collect and analyze all the facts to support an informed decision. It is always thoughtful strategy to move to suppress questionable evidence and reassess after an unfavorable ruling. In this case, the lawyers failed to take even the first basic step toward protecting Mr. Campbell's right against self-incrimination while under the influence of powerful narcotics.

Mr. Campbell was Prejudiced as a Result of Trial Counsels' Failure to File a Motion to Suppress Statements

Finally, the Appellee finally asserts that no prejudice exists in this case because even without Mr. Campbell's five recorded confessions other evidence was presented at trial to support the element of premeditation. Answer Brief, p. 20. However, in this case the prejudice of not filing a motion to suppress is paramount because without Mr. Campbell's confessions, particularly the fifth statement taken on August 16th, the State could not prove premeditation for the crime.

The Appellee relies in part on the argument that "before crashing into the police car, Appellant confessed the murder to State witness Margaret Driggers, long before he was in the hospital or taking any medication." Answer Brief, p. 20. However, Driggers testimony does not support any notion of premeditation or intent. At the guilt phase trial, Margaret Driggers read letters written to her by Mr. Campbell after his arrest where he expressed his desire to kill himself during the police car chase. *See* State Trial Exhibit 20; R15/174. Nowhere in the letters or in her testimony does the jury hear that Mr. Campbell intended, thought, or planned to kill his father. Later, Detective Cornell published text messages exchanged between Mr. Campbell and Driggers after the murder had occurred but before Mr. Campbell's apprehension. *See* State Exhibit 26; R15/245. Again, these texts show evidence of the murder itself, but not Mr. Campbell's premeditation or intent. Rather, these texts state that Mr. Campbell killed his dad with an ax and that Mr. Campbell will also die soon. R15/249-53.

Trial attorney Sharkey testified that the defense guilt phase strategy was to attack the premeditation element of first degree murder in order to "get a crack at second degree murder." PC/1002. In his view, the worst evidence the State had on both counts was the statement the police took from Campbell when he was at the Citrus County Jail on August 16th. PC/1003; PC/1018. He agreed that the statement

was a sort of "tipping point" between premeditation and heightened premeditation. PC/1018. Aside from Mr. Campbell's impaired confessions, there was no other evidence presented at trial to suggest heightened premeditation. Since the defense strategy was to attack the premeditation element, any reasonable attorney in this case would have done anything to suppress all of Mr. Campbell's confessions pre-trial. Trial counsel rendered prejudicial ineffective assistance by not hiring an expert which would have supported a motion to suppress based on trauma, medication and impairment. But for counsels' errors, there is a reasonable probability that Mr. Campbell would have had his statements suppressed and would have obtained a lesser included charge at trial. Because of this, the trial court's confidence in the outcome is undermined and the trial counsels' performance was deficient under *Strickland v. Washington*, 466 U.S. 668 (1984).

ARGUMENT II

THE TRIAL COURT ERRED IN DENYING MR. CAMPBELL'S CLAIM THAT TRIAL COUNSEL PROVIDED PREJUDICAL INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO PROVIDE PROMPT ASSISTANCE AND ERRED IN EXCLUDING THE TESTIMONY OF A DEFENSE EXPERT AT THE EVIDENTIARY HEARING IN SUPPORT OF THIS CLAIM

The Proposed Testimony of Defense Expert Witness Norman Adam Tebrugge was Relevant and Not Cumulative

During the time that Mr. Campbell was at the hospital and then transferred to

the Citrus County Jail he was repeatedly questioned by the police and made admissions that were devastating to his innocence and his ability to avoid a capital sentence. His attorneys did not make contact with him until nearly a week after his arrest. Norman Adam Tebrugge was tendered as an expert witness at the evidentiary hearing in support of the claim asserting ineffective assistance of trial counsel for failure to provide prompt assistance to Mr. Campbell. PC/1029. The trial court barred him from testifying and refused to allow collateral counsel to proffer his purported testimony. PC/1036, 1039.

The Appellee argues that Mr. Tebrugge's testimony would have been cumulative and unhelpful to the tier of fact as the two trial attorneys already testified about the notion of "rapid response." Answer Brief, p. 25. The Appellee, however, mischaracterizes the nature of the testimony from both trial attorneys. At the postconviction evidentiary hearing, the attorneys were questioned about their knowledge of the concept of "rapid response." Both attorneys testified in a very general way about the importance of contacting their clients as soon as possible. Attorney Lamberti stated: "Get to the person as soon as you can . . . It gives you the opportunity to begin looking for evidence . . . like cell phones and things like that, that may get lost through time. It gives you the opportunity to discuss with the client some of the circumstances surrounding the event, as well as making sure [the clients]

don't talk to law enforcement." PC/977.

Likewise, Mr. Sharkey stated that capital defense CLE courses routinely emphasize the need to contact a potential capital defendant as quickly as possible. PC/1004-05. These seminars impress on capital defense attorneys "trying to get . . . a doctor or a psychologist out to see them as soon as possible, see if you can get a blood sample, thing like that. . . that's something that I've heard and I've taken to heart and tried to act upon." PC/1004-05.

Adam Tebrugge's testimony would have delved into a more substantive analysis on this subject matter, beyond the generalized statements from the trial attorneys. Since collateral counsel was denied the opportunity to proffer Mr. Tebrugge's testimony, his expert report is the only evidence in the record on appeal that begins to discuss his proposed testimony. Most notably, his report states:

> Once an arrest is made in a homicide case, I am of the opinion that a member of the public defender staff, preferably an attorney, should make contact with the defendant. The purpose of the contact is to confirm that the Defendant is in need of an attorney, determine indigency, advise the Defendant of his constitutional rights, determine whether the Defendant is in need of an immediate psychological or medical evaluation, identify family member or friends who may assist, and determine whether there are aspects of the case in need of immediate investigation. This duty applies no matter where the defendant is arrested.

See Defense Witness List, Report from Norman Adam Tebrugge dated February 13,

2017; PC/830-33

Further, Mr. Tebrugge's testimony would have carried the weight of an expert trial attorney due to his qualifications and experience, thus having more material impact on the tier of fact in this case. Mr. Tebrugge graduated from law school with high honors in 1984, defended over one hundred homicide cases and twelve cases involving the death penalty over the course of a thirty year career. *See* Attachment 3 to Defense Witness List; PC/829-33. From 1995 to 2008, Mr. Tebrugge was on the Death Penalty Steering Committee of the Florida Public Defender Association and he planned the annual Florida "Life Over Death" training conference for hundreds of capital defenders statewide, often delivering the keynote presentation on Florida's capital punishment scheme. *Id*.; PC/1033-34. He teaches a death penalty seminar at Thomas Cooley Law School. PC/1030. Mr. Tebrugge is intimately familiar with counsel's duties in capital cases as well as the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. PC/830-33, 1035. Further, and most significantly, Mr. Tebrugge has testified six times as an expert witness in cases in which ineffective assistance of counsel was an issue. PC/1030-31. As a thirty-year veteran with immense experience in the field of capital defense, Mr. Tebrugge had specialized knowledge that would have assisted the trial court in understanding the prevalence and necessity of rapid response in homicide cases

throughout the State of Florida.

The Trial Attorneys' Failure to Make Prompt Contact with Mr. Campbell Resulted in Prejudicial Ineffective Assistance of Counsel

The Appellee argues that "attempts to establish prejudice are based on pure speculation about what would have happened had counsel met with Appellant." Answer Brief, p. 26. However, it is clear from the testimony presented at the evidentiary hearing, that there is no speculation at all about what would have happened. Both trial attorneys clearly stated that they would have told Mr. Campbell to invoke his right to remain silent and they would have had him sign an invocation of rights form.

During the postconviction evidentiary hearing, Attorney Lamberti testified that when he first meets with a client, one of his standard practices is to advise the client not to speak with law enforcement so as not "to give them statements that could be used against you in the future." PC/976. Likewise, Attorney Sharkey testified "If I'm aware of somebody we can get access to, I will try to send an investigator out there to have them sign an invocation of rights forms and things like that . . . as soon as practical." PC/1004. Mr. Sharkey agreed that obtaining an "invocation of rights in order to prevent the kinds of statements that occurred here" was "a sound practice, if practical." PC/1005. Mr. Sharkey stated: "If somebody's picked up for a homicide,

even before we've been appointed, I will try to send an investigator out there or I'll go out there myself or another attorney will go out there and say. You know sign these forms, don't talk to anybody. We'll do that if we . . . know about the case and know that we can reach them." PC/1016-17.

The Appellee also incorrectly states that Mr. Lamberti's has never visited with a defendant prior to being appointed. Answer Brief, p. 7. In fact, Mr. Lamberti testified that "in a rare circumstance . . . I have gone out to talk to a client before we've been appointed." PC/980-81. Further, Attorney Sharkey has also met with clients or sent an investigator out to sign invocation of rights forms prior to a first appearance hearing. PC/1004.

A *Strickland* claim of ineffective assistance ordinarily requires a showing of both deficiency and prejudice. While prejudice often requires a complex analysis, in this case it is simple. Any reasonably competent defense attorney, or staff investigator acting on one's behalf, would have advised Mr. Campbell not to speak to law enforcement. Both trial attorneys testified that this advice is part of their practice when meeting with a client for the first time. Further, every bit of evidence in this case shows that if Mr. Campbell had been so advised he would have heeded that advice. In fact, when Mr. Campbell eventually did receive the advice of counsel for the first time, he did sign the forms invoking his rights to counsel and to remain silent

when they were offered to him. If all of the five statements had not been given, but even if the last and most damaging statement at the jail alone were removed from consideration, there would have been a reasonable probability of a different outcome. In this case, without Mr. Campbell's confessions, there is a reasonable probability that he would have been convicted of a lesser included offense to capital murder.

CONCLUSION

Based on the foregoing Reply Brief and the Initial Brief of Appellant, the circuit court improperly denied Mr. Campbell's Amended Motion to Vacate Judgment and Sentence. Mr. Campbell respectfully requests that this Court reverse the circuit court's order denying his guilt phase claims, vacate his conviction, and grant him a new trial; or such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing REPLY BRIEF OF APPELLANT has been transmitted to this Court through the Florida Courts E-Filing Portal, which will send a notice of electronic filing to Patrick Bobek, Assistant Attorney General, at Patrick.Bobek@myfloridalegal.com and capapp@myfloridalegal.com, and mailed via United States Postal Service to John William Campbell, DOC #D35843, Florida State Prison, P.O. Box 800, Raiford, Florida 32083 on this 6th day of June, 2018.

/s/ Julie A. Morley
Julie A. Morley
Florida Bar No. 0085158
Assistant CCRC
Email: morley@ccmr.state.fl.us

/s/ Margaret S. Russell
Margaret S. Russell
Florida Bar Number 72720
Assistant CCRC-M
E-mail: russell@ccmr.state.fl.us

Law Office of the Capital Collateral
Regional Counsel-Middle Region
12973 N. Telecom Parkway
Temple Terrace, Florida 33637-0907
(813) 558-1600
Secondary E-mail: support@ccmr.state.fl.us
Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Reply Brief of Appellant was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210(a)(2).

/s/ Julie A. Morley
Julie A. Morley
Florida Bar No. 0085158
Assistant CCRC
Email: morley@ccmr.state.fl.us

/s/ Margaret S. Russell
Margaret S. Russell
Florida Bar Number 72720
Assistant CCRC-M
E-mail: russell@ccmr.state.fl.us

Law Office of the Capital Collateral
Regional Counsel-Middle Region
12973 N. Telecom Parkway
Temple Terrace, Florida 33637-0907
(813) 558-1600
Secondary E-mail: support@ccmr.state.fl.us

Counsel for Appellant