

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-7

WILLIAM ROGER DAVIS, III,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL
CIRCUIT IN AND FOR SEMINOLE COUNTY, STATE OF FLORIDA
Lower Tribunal No. 592009CF005140A000X**

**INITIAL BRIEF OF THE APPELLANT PURSUANT TO FLORIDA RULE OF
CRIMINAL PROCEDURE 3.851(i)(8)(B)**

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RECEIVED, 01/24/2018 02:33:26 PM, Clerk, Supreme Court

TABLE OF CONTENTS

Contents	Page(s)
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
REQUEST FOR ORAL ARGUMENT	1
STATEMENT OF THE CASE	2
I. Trial Court Proceedings	2
II. Postconviction Proceedings	4
STATEMENT OF THE FACTS	7
I. Statement regarding the facts of the trial proceedings.....	7
II. Summary of the hearing and colloquy in post-conviction.....	7
ARGUMENT AND CITATIONS OF AUTHORITIES	9
ARGUMENT I	10
The Florida Rule of Criminal Procedure 3.851(i) Dismissal of Postconviction Proceedings to be Reviewed by this Court	10
CONCLUSION	13
CERTIFICATE OF COMPLIANCE	14
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Davis v. State</i> , 148 So. 3d 1261 (Fla. 2014)	<i>passim</i>
<i>Durocher v. Singletary</i> , 623 So. 2d 482 (Fla. 1993)	11
<i>Hurst v. Florida</i> , 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014)	5
<i>Hurst v. State</i> , 202 So. 3d 40 (Fla. 2016)	5
<i>Perry v. State</i> , 210 So. 3d 630 (Fla. 2016)	5
Statutes	Page(s)
Fla. Stat. § 782.04(1)(a)	2
Fla. Stat. § 787.01(1)(a)3	2
Fla. Stat. § 794.011(3)	2
Rules	Page(s)
Florida Rule of Criminal Procedure 3.851.....	<i>passim</i>

PRELIMINARY STATEMENT

The defendant, William Roger Davis, III (hereinafter referred to as “Davis”) by and through undersigned counsel files this brief in accordance with Florida Rule of Criminal Procedure 3.851(i)(8). *See Fla. R. Crim. P. 3.851(i)(8)(B)*. Davis requested that the lower court dismiss his post-conviction proceedings. Davis did not request to discharge undersigned collateral counsel. After competency evaluations and a hearing, the lower court on November 20, 2017, issued a written Order dismissing with prejudice the Defendant’s Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851, and the Defendant’s Second Amended Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851. This Order is before this Court for review.

Page references to the trial record on appeal will be designated as “R[volume number]/[page number].” The postconviction record on appeal is not separated into volumes and will be cited by the page numbers and will be designated as “P[page number].” All other references will be self-explanatory or otherwise explained.

REQUEST FOR ORAL ARGUMENT

Undersigned counsel is not requesting an oral argument.

STATEMENT OF THE CASE

I. TRIAL COURT PROCEEDINGS

On November 17, 2009, a grand jury returned an indictment for Davis, for one count of First Degree Premeditated Murder in violation of Fla. Stat. § 782.04(1)(a), one count of Kidnapping Reclassified in violation of Fla. Stat. § 787.01(1)(a)3, and one count of Sexual Battery by use or threat of deadly weapon in violation of Fla. Stat. § 794.011(3). R1/17-18. The Office of the Public Defender in and for the Eighteenth Judicial Circuit was appointed to represent Mr. Davis, and he was primarily represented by Attorneys Timothy Dale Caudill, Scott Sterling, and Rebecca Sinclair.

On January 27, 2011, trial counsel filed a Notice of Intent to Rely on Insanity Defense pursuant to Florida Rule of Criminal Procedure 3.216(b), identifying Dr. Charles Golden as an expert witness. Thereafter, the State filed a Motion to Examine Defendant as to Sanity, and identified Drs. Daniel Tressler¹ and William Riebsame²

¹ “Dr. Tressler diagnosed Davis with bipolar disorder, polysubstance dependence, and antisocial personality disorder.” *Davis v. State*, 148 So. 3d 1261, 1267 (Fla. 2014).

² “Dr. Riebsame reached essentially the same conclusions as Dr. Tressler, stating that although Davis likely suffered from bipolar disorder and a personality disorder with antisocial and borderline characteristics, Davis's hallucinations were contrived and were not consistent with typical hallucinatory phenomena” *Davis*, 148 So. 3d at 1267.

as experts. R1/171-172. Trial counsel proceeded to trial under the theory of defense that Davis was not guilty by reason of insanity³. R3/506, 518.

The guilt phase proceedings took place April 23-27, 2012, and from April 30 to May 3, 2012. R5/3. On May 3, 2012, Davis was found guilty by a jury on all counts. R3/518-520. The penalty phase proceedings took place August 6-8, 2012. R17/2231. On August 8, 2012, the jury recommended a sentence of death by a bare majority vote of seven to five. R4/552. The trial court conducted a *Spencer* hearing on September 10, 2012. R21/2969. On December 17, 2012, the trial court entered a judgment and sentence imposing death on the murder count and life in prison on the remaining two counts, all sentences to run concurrently. R4/608-611; 655-656.

The trial court found the following statutory aggravating circumstances and assigned each of them great weight:

(1) Davis was on felony probation when the murder was committed [pursuant to Fla. Stat. § 921.141(a)]; (2) Davis was previously convicted of a felony involving the use or threat of violence to another person [pursuant to Fla. Stat. § 921.141(5)(b)]; (3) the murder was especially heinous, atrocious, or cruel (HAC) [pursuant to Fla. Stat. § 921.141 (5)(h)]; (4) the murder was committed in the course of committing sexual battery or kidnapping [pursuant to Fla. Stat. § 921.141 (5)(d)]; (5) the murder was committed to avoid arrest [pursuant to Fla. Stat. § 921.141 (5)(e)]; and (6) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (CCP) [pursuant to Fla.

³ Dr. Charles Golden, a forensic psychologist and mental health expert witness for the defense, diagnosed Davis with bipolar disorder that caused Davis to suffer from psychosis. He also diagnosed him with borderline personality disorder. *See Davis*, 148 So. 3d at 1267.

Stat. § 921.141 (5)(i)].
Davis, 148 So. 3d at 1269-1270; R4/635-648.

The trial court declined to find any of the statutory mitigating circumstances set forth under Fla. Stat. § 921.141(6)(a)-(g), but did find the following mitigating circumstances under subsection (h), assigning them varying amounts of weight:

(1) Davis suffers from long-term chronic mental health problems (some weight); (2) Davis can be properly treated with medication (some weight); (3) Davis is able to currently adapt to imprisonment (little weight); (4) Davis is able to hold employment (some weight); (5) Davis showed remorse for the murder (some weight); and (6) Davis showed appropriate courtroom demeanor (substantial weight).
Davis, 148 So. 3d at 1270; R4/648-655.

This Court affirmed Davis' convictions and sentence. *Davis v. State*, 148 So. 3d 1261, 1270 (Fla. 2014).⁴ Davis did not petition the United States Supreme Court for a writ of certiorari.

II. POSTCONVICTION PROCEEDINGS

This Court's opinion affirming Davis' judgment and sentence was rendered on October 9, 2014. The judgment and sentence became final on January 7, 2015, when the time for filing a petition for writ of certiorari with the Supreme Court of the United States expired. Davis' motion for postconviction relief was timely filed

⁴ The Supreme Court of Florida rejected each ground except for ground (4), holding that the "avoid arrest" aggravator was found in error but that such error was harmless beyond a reasonable doubt. *See Davis*, 148 So. 3d at 1279-1280.

on December 21, 2015, within one year of the date the judgment became final. P694-769; 770-942. *See Fla. R. Crim. P. 3.851(d)(1)*. The State filed their response on February 24, 2016. P964-1018.

On May 18, 2016, Davis filed a motion to amend his motion for postconviction relief with two additional claims [12 and 13] in light of the Supreme Court of the United States' opinion in *Hurst v. Florida*, 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014). P1048-1076. This motion was address by the lower court on May 20, 2016. The lower court found good cause to permit Davis to amend his motion and incorporated claims 12 and 13 in the pending 3.851 motion. P1088-1091; P1394. The State filed its response to Davis amended motion on June 13, 2016. P1092-1109.

During a status conference/case management conference on November 14, 2016, Davis advised the lower court that he would file a second amendment to his motion for postconviction relief in light of this Court's opinions in *Perry v. State*, 210 So. 3d 630 (Fla. 2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). P1176-1177; P1394-1395. The lower court granted permission to amend and on November 18, 2016, Davis filed a second motion to amend his motion for postconviction relief. P1176-1177; P1140-1160. The State filed its response on December 27, 2016. P1188-1202.

At the status conference conducted on January 9, 2017, counsel for Davis advised the lower court that Davis wished to waive all of his penalty phase claims,

including his claims based on *Hurst v. State*. P1295-1296; P1395. The lower court ordered the competency evaluation of Davis by two court-appointed experts. P1295-1296; P1293-1294; P1307-1324, P1395. In the interim, per Davis' request, counsel for Davis filed a letter with the lower court advising that he wished to withdraw his entire 3.851 motion. P1132-1135.

Drs. Jeffrey Danziger⁵ and Christopher Iler evaluated Davis and found him to be competent to waive his pending postconviction motion. P1291 (sealed document); P1328 (sealed document); P1329-1330; P1395. During the status conference on September 20, 2017, counsel for Davis advised the Court of Davis' letter indicating that he wished to waive his entire 3.851 motion. P.1337-1338; P1132-1135. Based on the evaluations, the lower court found Davis competent to proceed and a hearing was set to address the voluntariness of his waiver. P1338; P1329-1330. The hearing was scheduled for November 9, 2017, and Davis was ordered to be transported to Sanford, Seminole County. P1329-1330; 1345-1350.

After the hearing, the lower court issued a written Order on November 20, 2017, dismissing with prejudice the Defendant's Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure

⁵ Dr. Jeffrey Danziger also testified for the defense during Davis' *Spencer* hearing. He "diagnosed Davis with bipolar disorder, substance abuse disorder, and a personality disorder that included antisocial and borderline personality characteristics." *Davis*, 148 So. 3d at 1268-1269.

3.851, and the Defendant's Second Amended Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851. P1394-1396. Davis did not request to discharge undersigned counsel. In light of Fla. R. Crim. P. 3.851(i)(8)(B), undersigned counsel filed a notice seeking review in this court, which is now before this court. P1397-1403.

STATEMENT OF THE FACTS

I. STATEMENT REGARDING THE FACTS OF THE TRIAL PROCEEDINGS.

This Court summarized the guilt phase and penalty phase evidence in its direct appeal opinion. *See Davis*, 148 So. 3d at 1264-1270.

II. SUMMARY OF THE HEARING AND COLLOQUY IN POST-CONVICTION.

On November 9, 2017, a hearing was conducted by the lower court regarding the voluntariness of Davis' waiver of his 3.851 motion in the courtroom at the John E. Polk Correctional Facility in Sanford, Florida. P1351-1392; P1349. Davis was present in person at the hearing. Counsel for Davis and counsel for the State were also present in person. P1353-1354.

During the hearing, the lower court confirmed with Davis that he was evaluated by Drs. Danziger and Iler and that the doctors found him competent to proceed and to "understand the nature and consequences of what [they're] about to talk about." P1354-55. The lower court advised Davis that he can consult with his lawyers at any time during the hearing. P1355-1356. The lower court advised Davis

that it is the court's "responsibility to determine that [Davis is] knowingly, voluntarily, and freely waiving [his] right to postconviction relief." P1356. Davis and counsel for Davis advised the Court that Davis wishes to waive his postconviction 3.851 motions but not to discharge collateral counsel. P1356-1358.

Davis confirmed with the lower court that he had reviewed and discussed the contents of his 3.851 motion, which included *Hurst*-related claims, with his counsel. P1358-1359. Davis confirmed that he understood that he is waiving an evidentiary hearing on his claims; that he is waiving his right to call witnesses, to question witnesses, or present evidence on his behalf, that he is waiving his right to testify; that he is waiving his right to have counsel present argument and caselaw on his behalf; that his decision will affect further appellate review; that is waiving postconviction review by the court; that he is waiving his right to have the court make a determination as to the merits of his motions; and that he is waiving the potential for a new guilt or penalty phase. P1359-1363; P1366; P1368-1372.

The lower court specifically addressed with Davis the *Hurst*-related claims that were raised in his motion, as Davis' jury recommended death by a 7 to 5 vote. P1363-1366. The lower court advised Davis that "based upon *Hurst* since [he] would be likely be entitled to a new penalty phase in this case because there was not a unanimous verdict." P1363. Davis acknowledged that he understood that waiving his 3.851 motions would mean that he is waiving a new penalty phase where the

State would be required to prove aggravating circumstances beyond a reasonable doubt, that the jury would need to find those aggravators unanimously, and that the jury would have to be unanimous for the death penalty to be imposed. P1363-1365. Davis acknowledged that he is waiving the possibility of a life sentence at a new penalty phase proceeding. P1364-1366. Davis acknowledged that he understood that his waiver would be permanent. P1366-1367.

The lower court then questioned Davis as to his age, ability to read, write, speak and understand the English language, and his education. P1372-1373. The lower court questioned Davis about the medication that was administered. Davis testified that he was on Zoloft and Tegretol, his mental health medication. P1373. The lower court confirmed that Davis was provided his medication and with the proper dosage. P1373-1374. Davis denied that his medication was affecting his ability to understand the proceedings. P1374-1375; P1375-1376. Davis relayed that he has been diagnosed as “bipolar, manic depressant, borderline schizophrenic, and [he] was told [that he] had a personality disorder.” P1375.

Davis denied being made any promises, being forced, being coerced, or being threatened to waive his 3.851 motions. P1376-1377; P1378-1379. Davis acknowledged that he discussed his decision with his counsel and had taken into consideration his counsel’s advice. P1377-1378. Davis reiterated that he still wished to waive his postconviction motions and that he is doing it voluntarily and freely.

P1378. The lower court again went over all of the potential consequences of the waiver of the postconviction motions with Davis. P1380-1382.

The State did not have any further questions in addition to the lower court's questions. P1382-1383. The lower court reserved ruling on the waiver. P1384-1385. The lower court at the conclusion of the hearing realized that the clerk of the courts had not sworn Davis in prior to his testimony. P1386-1387. After the oath was administered, the court went over the colloquy again to make sure that Davis' testimony and decision to waive had not changed. P1387-1391. Davis acknowledged that he still wished to waive his postconviction motions. P1391.

ARGUMENT AND CITATIONS OF AUTHORITIES

ARGUMENT I

THE FLORIDA RULE OF CRIMINAL PROCEDURE 3.851 (I) DISMISSAL OF POSTCONVICTION PROCEEDINGS TO BE REVIEWED BY THIS COURT.

Florida Rule of Criminal Procedure 3.851(i) governs the dismissal of postconviction proceedings "when a defendant seeks both to dismiss pending postconviction proceedings and to discharge collateral counsel." Fla. R. Crim. P. 3.851(i)(1). Davis through undersigned counsel and a letter to the court, filed in a notice of filing, conveyed to the lower court that he wished to waive his 3.851 motions, but not to dismiss collateral counsel. P1295-1296; P1132-1135; P.1337-1338; P1132-1135. The lower court, upon being advised by collateral counsel of Davis' wishes and reviewing Davis' letter, appointed two experts to evaluate Davis'

competency, pursuant to Florida Rule of Criminal Procedure 3.851(i)(4). P1295-1296; P1293-1294; P1307-1324.

Drs. Jeffrey Danziger and Christopher Iler evaluated Davis and found him to be competent to waive his pending postconviction motion. P1291 (sealed document); P1328 (sealed document); P1329-1330; P1395. After reviewing the experts' reports, the lower court found Davis to be competent for the purposes of Florida Rule of Criminal Procedure 3.851(i)(6). P1395. Thereafter, in accordance with Florida Rule of Criminal Procedure 3.851(i)(6), the lower court scheduled a hearing to conduct a complete "inquiry to determine whether the defendant knowingly, freely and voluntarily wants to dismiss pending postconviction proceedings." P1395; Fla. R. Crim. P. 3.851(i)(6); *see Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993).

The lower court conducted a complete in-person hearing with Davis. *See infra* p.7-10; P1395; *see* Fla. R. Crim. P. 3.851(i)(6). Collateral counsel and counsel for the state were also present in person. *See infra*. P.7-10. The lower court reserved ruling after the inquiry. P1384-1385. On November 20, 2017, the lower court issued a written order dismissing with prejudice the Defendant's Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851, and the Defendant's Second Amended Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of

Criminal Procedure 3.851. P1394-1396; *see* Fla. R. Crim. P. 3.851(i)(7).

The lower court in its order dismissing Davis' current 3.851 proceedings stated as follows:

“[a]fter conducting an inquiry of the Defendant, the Court finds that the Defendant, William Roger Davis, III, has made the decision to dismiss his pending Rule 3.851 motion and terminate postconviction proceedings. He has done so fully aware of the legal consequences of that decision, including the legal consequences of abandoning his Hurst claims even though he would be entitled to Hurst relief. The Court also finds that the Defendant's decision to waive his pending 3.851 motion was made knowingly, freely, and voluntarily.”

P1395 (internal footnote omitted). Further the lower court noted that “the Florida Supreme Court has not addressed whether a defendant can waive a Hurst claim, especially when the defendant would clearly be entitled to Hurst relief.” P1395-1396. However, the lower court found that “in light of the Defendant's clear desire to dismiss his pending motion and terminate further postconviction proceedings, the Court [found] that it appropriate to grant the Defendant's request and to dismiss his pending motions.” P1396.

CONCLUSION

The foregoing proceedings and final order by the lower court dismissing with prejudice the Defendant's Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851, and the Defendant's Second Amended Motion to Vacate Judgements of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851, is before this Court for review as to whether Davis can waive his postconviction proceedings and whether his waiver is knowingly, freely, and voluntarily. Davis does not wish to discharge undersigned collateral counsel and would request continued representation for successive state or federal proceedings.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Fla. R. App. P. 9.210, that the foregoing document was generated in Times New Roman fourteen-point font.

Respectfully submitted

/s/ Raheela Ahmed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the PDF copy of the foregoing document has been transmitted to this Court through the Florida Courts E-Filing Portal on this 24th day of January, 2018.

I HEREBY CERTIFY that a copy of the foregoing has been served through the Florida Courts E-Filing Portal to **Christina Z. Pacheco**, Assistant Attorney General, Office of the Attorney General, on this 24th day of January, 2018.

I HEREBY CERTIFY that a copy of the foregoing was mailed to **Mr. William Roger Davis, III**, DOC# H17413, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on this 24th day of January, 2018.

Respectfully submitted

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