No. SC19-241

IN THE

SUPREME COURT OF FLORIDA

JEREMIAH RODGERS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

APPELLANT'S BRIEF IN RESPONSE TO ORDER TO SHOW CAUSE

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INTRODUCTION

This appeal asks the Court to review the circuit court's summary denial of Appellant Jeremiah "Jenna" Rodgers's Rule 3.851 motion for postconviction relief based on newly-discovered evidence.[1] The circuit court erred in denying relief without a hearing. Appellant timely raised constitutional claims supported by a detailed evidentiary proffer, these claims necessitate factual determinations by the circuit court, the current record does not conclusively establish that Appellant is not entitled to relief, and the State has neither conclusively proven that Appellant is entitled to no relief nor that her motion is legally flawed. *See Gaskin v. State*, 737 So. 2d 509, 516 (Fla. 1999).

Even if this Court does not agree that a hearing is required, the present appeal should not be summarily dismissed. Appellant has challenged her postconviction waiver based on newly-discovered medical evidence that was not previously available despite the exercise of due diligence, Appellant has presented detailed and individualized evidence that she was not competent at the time of her postconviction waiver, and Appellant has made a showing that justifies the opportunity for full briefing and argument.

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[1] Appellant has gender dysphoria, a medical condition resulting in one's gender identity not aligning with the sex assigned at birth. This motion refers to Appellant by her preferred female name and with gender-appropriate pronouns, consistent with prevailing medical standards.

For the reasons explained herein, Appellant respectfully requests that this Court vacate the decision below and remand for a hearing.

REQUEST FOR ORAL ARGUMENT

This appeal presents important issues regarding Appellant's competency at the time of her postconviction waiver and newly-discovered evidence raising substantial doubts that her waiver was knowing and voluntary—issues this Court has not yet considered in the context of the United States Supreme Court's recent decision in *Garza v. Idaho*, --- S. Ct. ---, 2019 WL 938523 (Feb. 27, 2019). Appellant requests the opportunity for counsel to present oral argument on these issues pursuant to Fla. R. App. P. 9.320.

BACKGROUND

In 1998, Appellant pleaded guilty to murder. *Rodgers v. State*, 934 So. 2d 1207, 1210 (Fla. 2006). An advisory jury recommended a death sentence by a vote of 9 to 3. *Id.* The trial court then made findings of fact and imposed a sentence of death. *Id.*

This Court affirmed Appellant's conviction but reversed her death sentence and remanded for a new penalty phase, concluding that the trial court had improperly excluded mitigating evidence. *Id.* at 1220.

Shortly after jury selection for the second penalty phase, Appellant waived certain rights associated with a jury trial. *Rodgers v. State*, 3 So. 3d 1127, 1130 (Fla.

2009). The circuit court again imposed a death sentence. *Id.* at 1131. This Court affirmed. *Id.* at 1135.

In 2010, after postconviction counsel had been appointed, Appellant wrote the circuit court a letter asking to end further appeals and expedite the execution process. In 2011, the circuit court accepted Appellant's decision to discharge appointed counsel and waive postconviction proceedings. Counsel unsuccessfully appealed that ruling. *Rodgers v. State*, 104 So. 3d 1087 (2012).

In 2017, Appellant filed a Rule 3.851 motion seeking relief under *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (2016). The circuit court summarily denied relief without a hearing, ruling that Appellant's postconviction waiver barred *Hurst* relief. This Court affirmed. *Rodgers v. State*, 242 So. 3d 276 (Fla. 2018), *cert denied*, *Rodgers v. Florida*, 139 S. Ct. 592 (2018).

On December 4, 2018, the day after certiorari was denied, Appellant filed a Rule 3.851 motion based on newly-discovered evidence. The circuit court summarily denied the motion without a hearing and stated that Appellant's postconviction waiver stands. R. 412-13.

On February 27, 2019, the State moved to dismiss Appellant's appeal of the circuit court's January 18 order. This Court ordered Appellant to show cause why the State's motion should not be granted.[2]

ARGUMENT

I. Appellant's Prior Waiver of Postconviction Proceedings Does Not Operate as an Absolute Bar to All Future Litigation and Does Not Bar the Current Litigation

A. No Appeal or Postconviction Waiver Can Be an Automatic and Absolute Bar to All Future Appeals Without Running Afoul of the United States Constitution.

The State asks the Court to dismiss this appeal based on Appellant's prior waiver of her initial postconviction proceedings. Motion at 1 (citing *Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993)). The State broadly argues that "*Durocher* waivers are not limited to the claims raised in the initial postconviction proceedings, all means all . . . . [A] defendant waives all postconviction proceedings forever including all future claims, and all future appeals as well." Motion at 10.

The State's argument is contrary to United States Supreme Court precedent. As a matter of federal constitutional law, Appellant's prior waiver does not bar this and all future appeals.

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[2] Appellant has provided a condensed brief here per the Court's order to show cause, but requests the opportunity to submit a full-length brief consistent with Fla. R. App. P. 9.210, to allow meaningful review of the issues on appeal.

Appellant and the State agree on one critical point: "[t]he right to forgo postconviction proceedings is akin to the right to forgo appeals." Motion at 14. Appellant agrees that this Court should consider Appellant's *Durocher* waiver in light of the law regarding appeal waivers. And on February 27, 2019, the United States Supreme Court decided an appeal-waiver case on point with the issue before this Court. In *Garza v. Idaho*, --- S. Ct. ---, 2019 WL 938523, at *8 (Feb. 27, 2019), the Supreme Court held that "even the broadest appeal waiver does not deprive a defendant of all appellate claims."

Although the State likely did not have the benefit of *Garza* when it moved to dismiss this appeal, as *Garza* was released just hours before the State's filing, *Garza* must nonetheless guide this Court's consideration of the State's request to dismiss Appellant's case without first allowing full briefing and argument.

In *Garza*, the Supreme Court addressed appeal waivers and stated that the term "can misleadingly suggest a monolithic end to all appellate rights. In fact, however, *no appeal waiver serves as an absolute bar to all appellate claims*." *Garza*, 2019 WL 938523, at *3 (emphasis added).

The Court explained that appeal waivers do not prohibit every conceivable appeal. Even individuals who sign comprehensive and wide-ranging waivers retain the right to appeal a number of fundamental issues concerning the validity, scope, and enforceability of their waiver.

> [A]ll jurisdictions appear to treat at least some claims as unwaiveable. Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself is valid and enforceable—for example, on the grounds that it was unknowing or involuntary. Consequently, while signing an appeal waiver means giving up some, many, or even most appellate claims, some claims nevertheless remain.

Id. at *4 (footnote omitted).

The same is true of Florida's postconviction waiver mechanism, which allows death-sentenced Florida inmates to knowingly and voluntarily waive their initial postconviction proceedings, but cannot serve as an absolute bar to all future litigation, particularly with respect to issues that were unknown at the time of the initial waiver. *See id.* at *3-4; *see also Halbert v. Michigan*, 545 U.S. 605 (2005) (holding that an appellant cannot knowingly and intelligently waive a right that has not been recognized to exist).

This Court must consider Appellant's postconviction waiver in light of the reasoning from *Garza* that an appeal waiver does not serve as an automatic and absolute bar to all appellate claims. Appellant acknowledges that a postconviction waiver—like an appeal waiver—may constrain litigation to a narrower set of postconviction claims than would otherwise be available and that a waiver may present an additional hurdle to relief, but those circumstances do not warrant a wholesale bar to litigation. *Campusano v. United States*, 442 F.3d 770, 777 (2d Cir. 2006) (explaining that, while opportunities for appellate success after an appeal

waiver may be rare, "such cases are not inconceivable" and courts cannot "cut corners" when constitutional rights are at stake).

B. Appellant is Challenging Her Postconviction Waiver Based on Newly-Discovered Evidence That She Was Not Competent to Knowingly, Intelligently, and Voluntarily Waive her Rights.

The State's contention that a capital postconviction waiver in Florida is a permanent bar to all future appeals, even appeals where the competency of the waiver itself is challenged, conflicts with this Court's precedent. This Court has indicated that postconviction proceedings may be litigated, even subsequent to a waiver, when there is a challenge to the appellant's competency at the time of the initial postconviction waiver and, thus, a challenge to the validity of that waiver.

This Court has held that, in order for a postconviction waiver to be valid, the waiver must be "knowing, intelligent, and voluntary." *Silvia v. State*, 123 So. 3d 1148, 1148 (Fla. 2013). The Court has also indicated that where postconviction proceedings are brought subsequent to a waiver, a defendant's challenge to the validity of the prior waiver—as not knowing, intelligent, or voluntary—changes the calculus. On many occasions, the Court has upheld waivers while expressly stating that the Court was not presented with a challenge to the appellant's competency. For example, in *Trease v. State*, 41 So. 3d 119, 126 (Fla. 2010), the Court addressed the appellant's desire to rescind his prior waiver after "he simply changed his mind."

The Court upheld the waiver, explaining the appellant did "not contest the validity of the *Durocher* hearing." *Id.*[3]

In the instant case, Appellant has presented newly-discovered evidence claims that challenge her competency at the time of her postconviction waiver, the validity of the *Durocher* hearing, and the errors of defense counsel and the court regarding the assessment of her competency. *See generally James*, 974 So. 2d at 368 (explaining that a postconviction waiver can occur "only when it can be . . . ensure[d] that a capital defendant is making an intelligent and knowing decision").

Appellant has presented new, detailed, and individualized assessments from several medical and mental health professionals who opine that Appellant was not competent at the time of her postconviction waiver. R. 89-172. Their conclusions

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[3] *See also Silvia*, 123 So. 3d at 1148 (affirming the dismissal of postconviction proceedings "[o]n the basis of this record" that did not include a challenge to the appellant's competency at the time of his postconviction waiver); *James v. State*, 974 So. 2d 365, 368 (Fla. 2008) (affirming the circuit court's denial of the appellant's request to resume postconviction proceedings because the appellant "asserted no valid basis for avoiding his waiver"); *State v. Silvia*, 235 So. 3d 349, 351 (Fla. 2018) ("Silvia's original, valid postconviction waiver, which he has never contested before this Court, precludes him from claiming a right to relief under Hurst."); *Russ v. State*, 107 So. 3d 406 (Fla. 2012) (explaining that counsel did not assert the appellant was incompetent at the time of his postconviction waiver and that, in the absence of an attack on the validity of the waiver, the Court had no basis to set it aside); *Rose v. State*, 249 So. 3d 547, 551 (Fla. 2018) (holding that "on this record, we find no abuse of discretion in the postconviction court's finding" that the appellant's waiver "was knowingly, intelligent, and voluntary"); *Gill v. State*, 107 So. 3d 326, 328 (Fla. 2012) ("In this proceeding, Gill has failed to present any facts that demonstrate he is incompetent; his arguments merely reflect that he wishes to set aside his waiver because he has changed his mind.").

are based on a medical condition that could not have been known to Appellant or her counsel at the time of prior competency assessments or waiver proceedings.

As one expert concluded:

> [T]he presence of untreated Gender Dysphoria was, and is, associated with depression, shame, self-hatred, and self-destructiveness up to and including suicidality expressed as a . . . waiver of rights to a post-conviction review of [Appellant]'s death penalty sentence. As such, it is my opinion that these waivers of rights . . . were not fully voluntary or knowing, predominantly on the basis of the presence of severe, untreated, undiagnosed Gender Dysphoria with associated depression. I offer these opinions within a reasonable degree of medical certainty.

R. 119.

> It is my professional opinion that the interplay of [Appellant]'s medical condition of gender dysphoria, along with her multiple diagnoses, . . . ha[s] affected her competency on several occasions. I have substantial doubts as to her competency during her . . . waiver of her state post-conviction rights.

R. 164; *see also* R. 172-73 (explaining that Appellant's mental illnesses "are put into perspective with the diagnosis of gender dysphoria," that competency "is fluid," and that the psychologist has "a strong doubt" as to Appellant's competency at the time of her postconviction waiver); R. 145 (explaining that, at the time of Appellant's postconviction waiver, her gender dysphoria and comorbid psychiatric disorders were "present and active . . . and greatly affected [her] mental state, her emotional development, and decision-making at that juncture").

C. Appellant is Entitled to Decide Whether to Waive Postconviction Proceedings or Pursue Postconviction Relief.

The State directs this Court to *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), and *Jones v. Barnes*, 463 U.S. 745 (1983), for the proposition that, while some decisions in a criminal case are within the province of the lawyer, "some decisions 'are reserved for the client' to personal[ly] make." Motion at 14 (quoting *McCoy*, 138 S. Ct. at 1508). The Supreme Court has identified multiple decisions "reserved for the client—notably whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal." *McCoy*, 138 S. Ct. at 1508. *See also Barnes*, 463 U.S. at 751 ("[T]he accused has the ultimate authority to make certain fundamental decisions regarding the case . . . ."). This Court has also held that "a defendant continues to have a right to self-determination during postconviction proceedings . . . ." *Lambrix v. State*, 124 So. 3d 890, 899 (Fla. 2013). A defendant's decision-making authority is protected by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

The State contends that "the logic of *McCoy* and *Barnes*" applies to decisions to waive or litigate postconviction proceedings. Motion at 14 ("The right to forgo postconviction proceedings is akin to the right to forgo appeals."). Arguing that "postconviction counsel has a duty to abide" by his client's "personal decisions," the State claims Appellant's "current counsel . . . are ignoring that duty." Motion at 14.

But the State ignores that Appellant desires to have undersigned counsel litigate the instant appeal, just as Appellant desired to have counsel litigate all of the claims that were raised before the circuit court.

While Appellant may have previously expressed a desire to waive postconviction proceedings and counsel, the record is clear that Appellant no longer desires such. In 2015, at the request of Appellant, undersigned counsel was appointed to represent Appellant and has been litigating legal claims on her behalf since. Appellant wants to pursue postconviction relief and to do so with the assistance of current counsel; therefore, counsel has a duty to challenge Appellant's convictions and sentences in postconviction proceedings and to appeal a denial to this Court. *See Garza*, 2019 WL 938523, at *5 ("Where . . . a defendant has expressly requested an appeal, counsel performs deficiently by disregarding the defendant's instructions."); *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000) ("[A] lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable.").

This appeal is brought before the Court in accordance with the desires of Appellant and the "fundamental decisions" the State contends Appellant is entitled to make about Appellant's own case. This matter does not arise from a mere change of mind on the part of Appellant, but from significant newly-discovered evidence that reveals, among other things, the invalidity of her prior waiver.

II. This Appeal Presents Legal Issues That Were Not Decided in Appellant's Prior Appeal and Are Not Barred by the Law-of-the-Case Doctrine.

The State wrongly argues that this appeal is barred by the law-of-the-case doctrine. Motion at 11. The law-of-the-case doctrine is not an "absolute" bar, *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997), and does not apply here.

As this Court has explained, "The doctrine of the law of the case requires that questions of law *actually decided* on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings." *Fla. Dep't of Transp. v. Juliano*, 801 So. 2d 101, 105-06 (Fla. 2001) (emphasis added). In other words, "[t]he doctrine of law of the case is limited to rulings on questions of law actually presented and considered on a former appeal." *U.S. Concrete Pipe Co. v. Bould*, 437 So. 2d 1061, 1063 (Fla. 1983).

In the postconviction motion underlying this appeal, Appellant raised multiple claims that—while involving issues of *Hurst* sentencing errors and gender dysphoria, which were relevant to this Court's prior decision in Appellant's case—have neither been presented to an appellate court nor decided by an appellate court.

Appellant's prior appeal raised one claim: her death sentence was unconstitutional under the Sixth and Eighth Amendments in light of *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *Rodgers*, 242 So. 3d at 276-77. The prior postconviction motion and the appeal of

its denial did touch on Appellant's medical conditions, including gender dysphoria, but did not raise the same legal issues Appellant raised before the circuit court in December 2018 and would raise in a full appeal here. *Id.* at 280 (Pariente, J., concurring) (explaining that Appellant's gender dysphoria diagnosis was not before the Court as a claim of newly-discovered evidence).

In Appellant's 2018 postconviction motion, she raised multiple legal claims based on the newly-discovered evidence of her gender dysphoria: she was denied substantive due process as a result of being incompetent at her second penalty phase, when she waived her penalty phase jury, and when she waived her postconviction proceedings; she was denied procedural due process as a result of the court and defense counsel's failures to ensure she was competent at various critical stages of this case; she was denied the effective assistance of counsel when she pleaded guilty; and her death sentence is based on an unreliable aggravating factor. None of these claims have been considered by this Court in the context of Appellant's newly-discovered evidence of gender dysphoria.

In *Juliano*, this Court "reaffirmed the principle that an issue is not foreclosed by the doctrine of the law of the case merely because it could have been presented in an earlier appeal." *Fitchner v. Lifesouth Cmty. Blood Centers, Inc.*, 88 So. 3d 269, 275 (Fla. 1st DCA 2012) (citing *Fla. Dep't of Transp. v. Juliano*, 801 So. 2d 101 (Fla. 2001)). "[T]he law of the case doctrine 'has no applicability to, and is not

decisive of, points presented upon a second writ of error that were not presented upon a former writ of error and consequently were not before the appellate court for adjudication.'" *Juliano*, 801 So. 2d at 106 (citation omitted). The doctrine "does not bar consideration of a point" that "could have been presented"; it bars only reconsideration of issues that were specifically presented and decided in an earlier appeal. *Fitchner*, 88 So. 3d at 275.

On appeal from the denial of Appellant's prior postconviction motion, this Court was not presented with and did not decide any claims related to newly-discovered evidence. As a result, those claims cannot be barred by the law-of-the-case doctrine. "[T]he law-of-the-case doctrine is not applicable to a legal question that has not yet been decided on appeal." *Delta Prop. Mgmt. v. Profile Investments, Inc.*, 87 So. 3d 765, 770 (Fla. 2012).

The doctrine also does not apply in situations where the latter postconviction motion presents the trial court with new factual allegations. *Murray v. State*, 3 So. 3d 1108, 1116 (Fla. 2009) (stating that the doctrine does not apply once "additional facts [are] placed in evidence"); *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246, 1266 (Fla. 2006) (stating that the doctrine does not apply when there has been a "change in the facts" upon which the prior decision was based).

In the instant case, Appellant's postconviction motion presented new evidence regarding Appellant's medical condition of gender dysphoria, its import, and its

impact on her competency at times when she waived constitutional rights. As this evidence was not previously presented to the Court, consideration of it cannot be barred by the law-of-the-case doctrine.

"The law-of-the-case doctrine was meant to apply to matters litigated to finality, not to matters that remain essentially unresolved . . . . [A] plaintiff should be permitted to assert a new theory" for relief. *Wells Fargo Armored Servs. Corp. v. Sunshine Sec. & Detective Agency, Inc.*, 575 So. 2d 179, 180 (Fla. 1991). As the claims currently before the Court have not been previously raised and have not been ruled upon by this Court, they are not barred by the law-of-the-case doctrine.

Moreover, "an exception to the general rule binding the parties to 'the law of the case'" exists "where 'manifest injustice' will result from a strict and rigid adherence to the rule." *Strazzulla v. Hendrick*, 177 So. 2d 1, 4 (Fla. 1965) (quoting Judge Learned Hand as explaining "that 'the 'law of the case' does not rigidly bind a court to its former decisions, but is only addressed to its good sense'"). "[E]xceptional circumstances" can also "open [a matter] for discussion or consideration in subsequent proceedings in the case." *Greene v. Massey*, 384 So. 2d 24, 28 (Fla. 1980).

A capital case where multiple mental health experts have expressed serious doubts as to Appellant's competence at a critical legal juncture based on a newly-discovered medical condition qualifies as an exceptional situation where the Court

should hear claims to prevent manifest injustice. Courts must "indulge every reasonable presumption against waiver of fundamental constitutional rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (citations, internal quotations omitted). *See also Halbert v. Michigan*, 545 U.S. 605 (2005) (explaining that a defendant cannot waive a right that has not been recognized, as such a waiver cannot be a knowing and intelligent act); *Smith v. Yeager*, 393 U.S. 122, 126 (1968) (holding that a defendant cannot waive a "right or privilege [that] was of doubtful existence" at the time of the waiver).

III. The Circuit Court Wrongly Dismissed on Timeliness Grounds.

The circuit court wrongly dismissed Appellant's claims on timeliness grounds. This litigation is timely, as diligent counsel could not have previously discovered Appellant's medical condition of gender dysphoria. Dr. Sarah DeLand, who testified at Appellant's original trial, explains that mental health professionals did not diagnose Appellant with gender dysphoria earlier for the simple reason that gender dysphoria was not yet "a recognized diagnosis." R. 196-97. Dr. Lawrence Gilgun, who evaluated Appellant prior to her original trial, concurred that previously diagnosing Appellant with gender dysphoria was not feasible. R. 163-64. At the time of Appellant's trial, resentencing, and postconviction waiver, gender dysphoria was neither clinically recognized nor included in the Diagnostic and Statistical Manuals that were in effect then. R. 155.

Appellant's gender dysphoria was not previously known to the trial court, defense counsel, or even Appellant. Appellant carried an intense amount of shame over her transgender identity. R. 113. She was aware that she was undergoing sex role confusion from an early age, but she "did not have a name for what she was experiencing" or an understanding of what it meant. R. 134, 173.

Multiple mental health professionals have opined that Appellant's gender dysphoria—marked by self-harm, depression, and self-loathing—manifested in her waivers of constitutional rights. R. 96, 155, 163, 173. Appellant's gender dysphoria and related self-injurious behavior and suicidality creates reasonable doubt as to whether her postconviction waiver was voluntary, knowing, or intelligent. R. 119, 172-73.

Since Appellant's prior *Hurst* litigation before the Court, Appellant has obtained reports from four mental health professionals, a social worker, and multiple legal professionals who previously represented Appellant. R. 150-207. The two mental health experts who first proposed that Appellant has gender dysphoria have reviewed this additional information and can now offer more detailed and specific professional opinions on how, at the time of her postconviction waiver, Appellant was impaired by undiagnosed and untreated gender dysphoria. R. 107-20, 145-49. These experts could not previously have offered the same assessment of the validity of Appellant's postconviction waivers.

Factual allegations in support of a postconviction motion for relief under Fla. R. Crim. P. Rule 3.851 that are sufficient to state a prima facie claim of newly-discovered evidence entitle a defendant to an evidentiary hearing. *See, e.g., McLin v. State*, 827 So. 2d 948 (Fla. 2002); *Keen v. State*, 855 So. 2d 117 (Fla. 2d DCA 2003). Rule 3.851 does not require a defendant to submit affidavits in support of their factual allegations. *Valle v. State*, 705 So. 2d 1331 (Fla. 1997) (discussing in the context of Fla. R. Crim. P. Rule 3.850); *Smith v. State*, 837 So. 2d 1185 (Fla. 4th DCA 2003) (same). But when a defendant includes supporting affidavits, it strengthens the need for an evidentiary hearing. *See, e.g., Johnson v. Singletary*, 647 So. 2d 106, 110 (Fla. 1994) ("[Evidentiary hearing] rulings must be made on a case-by-case basis. In making our decision today, we are influenced by the fact that there is not just one but several affidavits . . . .").

In this case, Appellant has presented affidavits and declarations of multiple mental health and legal professionals as well as reports from experts in psychology and psychiatry. Appellant has established a prima facie claim of newly-discovered evidence, which she is entitled to develop at an evidentiary hearing.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court deny the State's motion, schedule full briefing, grant oral argument, and ultimately remand for an evidentiary hearing and/or grant relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Terri L. Backhus, hereby certify that on March 13, 2019, I served this filing by electronic transmission via the e-portal to Assistant Attorney General Charmaine Millsaps at capapp@myfloridalegal.com and charmaine.millsaps@myfloridalegal.com.

/s/ Terri L. Backhus
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