No. SC2025-0585

EXECUTION SCHEDULED FOR MAY 15, 2025 at 6:00 PM

IN THE

SUPREME COURT OF FLORIDA

GLEN EDWARD ROGERS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT, IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
Lower Tribunal No.: 291995CF015314000AHC

INDEX TO APPENDIX TO APPELLANT BRIEF

Ali Shakoor
Florida Bar Number 0669830
Email: shakoor@ccmr.state.fl.us

Adrienne Joy Shepherd
Florida Bar Number 1000532
Email: shepherd@ccmr.state.fl.us

Law Office of The Capital Collateral
Regional Counsel - Middle Region
12973 North Telecom Parkway
Temple Terrace, Florida 33637
Telephone: (813) 558-1600
Fax: (813) 558-1601
Second Email: support@ccmr.state.fl.us

Counsel for Appellant

APPENDIX TO APPELLANT'S BRIEF UNDER DEATH WARRANT

Appendix A Judge Michelle Sisco's ORDER GRANTING DEFENDANT'S PRO SE MOTION TO DISCHARGE COUNSEL AND APPOINT DE NOVO CONFLICT FREE COUNSEL. State of Florida v. Terence Valentine, CASE NO: 1988-CF-012996

Appendix B State v. Valentine Petition for Review of Nonfinal Order

Appendix C Dr. Bryanna Fox Report

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Appendix A Judge Michelle Sisco's Order Granting Defendant's Pro Se Motion to Discharge Counsel and Appoint De Novo Conflict Free Counsel. State of Florida v. Terence Valentine, Case No.: 1988-CF-012996

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STATE OF FLORIDA **CASE NO: 1988-CF-012996**
DIVISION J

v.

TERENCE GERALD VALENTINE

ORDER GRANTING DEFENDANT'S PRO SE MOTION TO DISCHARGE COUNSEL AND APPOINT DE NOVO CONFLICT FREE COUNSEL

This Court, having considered the Defendant's ***MOTION TO DISCHARGE CAPITAL COLLATERAL REGIONAL COUNSEL-MIDDLE BECAUSE OF AN IRRECONCILABLE CONFLICT AND FAILURE TO ACT AS DEFENDANT'S LEGAL COUNSEL AND TO APPOINT DE NOVO CONFLICT FREE COUNSEL,*** CCRC-Middle's RESPONSE TO TRIAL COURT'S AUGUST 30, 2016 ORDER FOR POSTCONVICTION COUNSEL TO RESPOND, the STATE'S RESPONSE TO PRO SE MOTION TO DISCHARGE COUNSEL, CCRC-Middle's RESPONSE TO TRIAL COURT'S DECEMBER 8, 2016 ORDER FOR POSTCONVICTION COUNSEL TO RESPOND, and having heard argument of counsel, it is

HEREBY ORDERED and ADJUDGED:

1. Mr. Valentine is an indigent defendant who has been sentenced to death.
2. His court-appointed counsel, CCRC-Middle, has a conflict and is hereby discharged.
3. Having determined that Marie-Louise Samuels Parmer meets or exceeds the minimal requirements to represent a capital defendant in post-conviction proceedings in Florida courts, that Ms. Parmer has an established attorney-client relationship with Mr. Valentine, and that due to the unique set of facts in this case, the Court appoints Ms. Parmer in the interest of justice to represent Mr. Valentine in his capital postconviction proceedings in the above-styled case.
4. This Order is effective as of the oral pronouncement of appointment in Court of March 8, 2017.
5. Ms. Parmer must contract with the Florida Justice Administrative Commission in this cause and agrees to seek compensation at the rate established by the JAC. Ms. Parmer further agrees to abide by JAC practices in retaining co-counsel, expert and investigative

assistance.

6. Payment for Ms. Parmer's work, including all necessary and reasonable travel, is the responsibility of the Justice Administrative Commission.

DONE AND ORDERED at Tampa, Hillsborough County, Florida this 16th day of March, 2017.

Electronically Conformed 3/16/2017

Appendix B State v. Valentine Petition for Review of Nonfinal Order

2017 WL 1331403 (Fla.) (Appellate Brief)
Supreme Court of Florida.

STATE OF FLORIDA, Petitioner,
v.
Terance VALENTINE, Respondent.

No. 2017-629.
April 7, 2017.

Lower Tribunal No.: 88-CF-012996

Petition for Review of Nonfinal Order

***1** COMES NOW, the State of Florida, by and through undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.142(c), and hereby respectfully petitions this Court for review of a nonfinal order issued in a case in which the death penalty has been imposed. In support of this Petition the State would allege as follows:

Basis for Invoking Jurisdiction

This Court's jurisdiction to review nonfinal orders in cases where the death penalty has been imposed arises from Article V, Section 3(b) (1) of the Florida Constitution and Florida Rule of Appellate Procedure 9.142(c). See Trepal v. State, 754 So. 2d 702 (Fla. 2000). Such review is appropriate when the trial court issues an order which departs from the essential requirements of the law, for which there is no adequate remedy on appeal. In this case, Judge Sisco's erroneous ruling to discharge the Office of Capital ***2** Collateral Regional Counsel and appoint a new attorney violates Section 27.703, Florida Statues, and Florida Rule of Criminal Procedure 3.851(b) (6), and will cause irreparable harm to the State. Accordingly, review should be granted.

Date and Nature of the Order to be Reviewed

The nonfinal order subject to review in this petition was rendered on March 16, 2017 (Ex. 1). The order discharges the Office of Capital Collateral Regional Counsel for the Middle Region of Florida [CCRC-M] as counsel of record for Respondent Valentine, and appoints private attorney Marie Louis Samuels-Parmer for all future representation of Valentine in state court.

Name of Lower Tribunal Rendering the Order

The nonfinal order subject to review in this petition was rendered by the Honorable Michelle Sisco, Circuit Court Judge for the Thirteenth Judicial Circuit, in the case of State v. Valentine, Case No. 88-CF-12996.

Procedural History

Terance Valentine was convicted of the 1988 first-degree murder of Ferdinand Porche, the attempted first-degree murder of Livia Romero, and other related offenses, and sentenced to death. *Valentine v. State,* 616 So. 2d 971 (Fla. 1993). Following retrial due to an error in jury selection, the same convictions and ***3** sentences were imposed. On appeal, the attempted murder conviction was vacated, but the other convictions and the death sentence were affirmed. *Valentine v. State,* 688 So. 2d 313 (Fla. 1996), cert. denied, 522 U.S. 830 (1997). This Court described the following facts in its initial opinion:

Livia Romero married Terance Valentine while she was a teenager in Costa Rica and the couple emigrated to the United States in 1975, settled in New Orleans, and adopted a child. After seeking to divorce Valentine in 1986, Romero married Ferdinand Porche and the family moved to Tampa, where they began receiving telephoned threats from Valentine. On

September 9, 1988, Valentine armed himself, forced his way into the family's home, wounded Porche, drove both Romero and Porche to a remote area and shot them. Romero survived and immediately told police Valentine was her assailant.

Several weeks after being released from the hospital, Romero began receiving telephone calls from Valentine, which she taped using a telephone and recorder supplied by police. Valentine was eventually arrested and charged with armed burglary, kidnapping, grand theft, first-degree murder and attempted first-degree murder. His motion to suppress a conversation taped on November 7 was denied; an edited tape was played for the jury; and the court subsequently declared a mistrial after the jury was unable to reach a unanimous verdict.

The entire fifteen-minute tape was played for the jury on retrial. Additional evidence included Romero's testimony and that of Porche's neighbor, who testified that on September 9 he saw two men sitting in a faded red and white or red and gray Ford Bronco parked opposite his house between 1 and 3 p.m. Nancy Cioll, a friend of Valentine's and Romero's, testified that about two weeks after the killing, Valentine visited her driving a maroon, gray and black Ford Bronco. She said he confessed to the shootings, demonstrated how he had shot Romero, and said he had made a mistake leaving Romero alive. Valentine's alibi defense that he was in Costa Rica at the time of the shootings was disbelieved by the jury and he was convicted on all counts. During the penalty ***4** phase, Valentine represented himself and called his daughter and two friends to testify on his behalf.

Valentine, 616 So. 2d at 972. In the appeal following the retrial, the Court recited the trial court's description of the crimes:

On September 9, 1988, Ferdinand Porche returned to his home in mid-afternoon expecting to meet his pregnant wife and small child. Instead he was greeted by a bullet in the back which [severed his spinal cord and] rendered him paralyzed from the waist down. Mr. Porche was then confronted by Mr. Valentine who announced "this is my revenge." Mr. Porche was forced to crawl into a bedroom where he found his wife nude, bound, and gagged and his baby crying and covered in blood. Mr. Valentine then pistol whipped Mr. Porche. Mr. Porche's face was lacerated, his jaw was broken, and several teeth were knocked out. According to the medical examiner there were at least three separate blows to Mr. Porche's face. After administering this beating Mr. Valentine made his purpose clear, announcing, "I'm gonna kill you, but you're gonna suffer. This is not going to be easy." Further tortuous acts included stabbing Mr. Porche in the buttocks-- the knife stopping only because it struck bone, kicking Mr. Porche in the chest, and dragging him after he was bound hand and foot with [baling] wire. The medical examiner testified that all of the above injuries occurred while Mr. Porche was alive, that none was immediately life threatening, and none would immediately result in a loss of consciousness. Mrs. Porche testified that Mr. Porche told her he was in so much pain that he did not know why he did not lose consciousness. Mrs. Porche testified she could feel him touch her as if to reassure her while they were in the back of the Blazer being transported [to an isolated area].

While the fatal gunshot resulted in near instantaneous loss of consciousness and death, the ordeal leading up to his death was quite lengthy. Mr. Porche was beaten and degraded in his home. Trussed like an animal he was kidnapped and taken on a nine-mile trip to his slaughter. Either due to the gunshot wound to his spine or through the stress of the ordeal Mr. Porche lost control of his bowels and was covered with his own excrement.

***5** Paralyzed and bound hand and foot with wire there was nothing Mr. Porche could do to save himself. Nor was there anything he could do to protect his wife, who he knew was the ultimate object of Mr. Valentine's barbarous intent. Nor could he know what would happen to his ten-month-old daughter or what would become of Mrs. Porche's adopted child. The horror, terror and helplessness that Ferdinand Porche experienced prior to being shot in the eye at point blank range are evident.

Valentine, 688 So. 2d at 315-16.

At the 1994 penalty phase, Valentine waived the advisory jury recommendation and presented his mitigation directly to the trial judge. Id., at 315. The Honorable Diana Allen imposed a death sentence on Sept. 30, 1994. She found four aggravating factors: prior violent felony conviction based on the attempted murder conviction; committed during a burglary/kidnapping; heinous, atrocious or cruel; and cold, calculated and premeditated. Id., at 316 n.4. The court gave slight weight to the mitigating factors found, including Valentine's lack of prior violence, Valentine's work history and skills that could contribute to the prison system, Valentine's large family that will continue to love and support him, and Valentine's cooperation at his arrest and behavior as a model prisoner. Id., at 316 n.5.

As noted, this Court vacated the attempted murder conviction and sentence, but affirmed judgment and sentencing on all remaining counts. Valentine sought certiorari review in the United States ***6** Supreme Court, and review was denied on October 6, 1997. *Valentine v. Florida,* 522 U.S. 830 (1997).

On April 9, 1998, attorneys John W. Moser and James H. Walsh of the Office of Capital Collateral Regional Counsel, Middle Region [CCRC-M] filed a Notice of Appearance (Ex. 2). A "shell" Motion to Vacate Judgement of Conviction and Sentence with Special Request for Leave to Amend was thereafter filed on May 28, 1998 (Ex. 3). The motion was signed by attorneys James Walsh and Linda McDermott, and verified by Valentine.

During this time, there were significant issues statewide regarding the funding of the three CCRC offices. On June 25, 1998, this Court directed the tolling of time frames in Florida Rules of Criminal Procedure 3.851 and 3.852. *See Amendments to Florida Rules of Criminal Procedure - Capital Postconviction Public Records Production,* 719 So. 2d 869 (Fla. 1998). On May 10, 1999, a new notice of appearance was filed by attorneys John W. Moser, Ronald S. Tulin, and James H. Walsh of CCRC-M (Ex. 4).

On July 16, 1999, following extensive public records litigation, attorney Tulin filed a Motion to Extend or Toll Filing Time for 3.850 Motion, noting that this Court had designated August 31, 1999, as the due date for Valentine's 3.850 motion (Ex. 5). The motion advised that counsel Tulin became aware on July 15, 1999, that Valentine's case was "being sent to the Registry for ***7** substitution of counsel," and that his records were being prepared to transfer to substitute counsel. The motion also asserted that counsel believed Valentine wanted to waive the filing of any mitigation claims in his 3.850 motion, and would likely need to be evaluated for competency, requiring further brief delay.

On August 6, 1999, Judge Allen received a letter from Valentine, asking for relief from his relationship with CCRC-M, claiming their representation to be a charade and a waste of time, effort, and resources (Ex. 6).

On October 4, 1999, the trial judge entered an Order granting an extension of time and appointing attorney Nick J. Sinardi, Esquire, who met the "criteria set forth in F.S. 27.704(2) and has high ethical standards," to represent Valentine in his postconviction proceeding (Ex. 7). Numerous extensions of time were obtained and on May 14, 2001, attorney Sinardi filed Defendant's Motion to Vacate and Set Aside the Judgement of Conviction and Sentence with Attached Appendix (Ex. 8).[1]

Following the filing of the State's response, Valentine wrote a letter to the trial judge on April 27, 2002, asking for the appointment of an investigator and/or the questioning of Mr. Sinardi as to his failure to cooperate with Valentine and hire his ***8** own investigator (Ex. 9). Valentine felt that, with further assistance, he could "demonstrate the clearly lack of advocacy, the abuses of the district attorney and ineptitude of the attorneys in my case." The postconviction record then reflects that an Order was entered on October 28, 2002, which summarily denied a number of claims and granted an evidentiary hearing on twelve allegations of ineffective assistance of trial counsel (Ex. 10).[2] On March 23, 2003, Valentine sent another letter to the judge, again complaining of the representation provided by attorney Sinardi and asking for the court's assistance and attaching prior letters he had previously sent to Mr. Sinardi (Ex. 11).

Sinardi secured funds for the assistance of investigative experts in November, 2003, and in future orders (Ex. 12). Another letter of complaint by Valentine was received by the court dated March 19, 2004 (Ex. 13). An amendment to the postconviction motion was filed on August 3, 2005, and the evidentiary hearing was expanded to include the Claim XI(5), as amended (Ex. 14).

On October 12, 2005, Valentine filed a Motion to Withdraw Counsel, asserting that Mr. Sinardi had not been diligent but had been incompetent and deceptive in representing Valentine (Ex. 15). ***9** Valentine also sent a letter of complaint to this Court on December 30, 2005, which this Court forwarded to Sinardi for a response (Ex. 16). Sinardi responded to this Court's inquiry in a letter, advising that a two hour in-camera hearing had been conducted on January 27, 2006, with regard to allegations made by Valentine. After taking testimony from all parties, the court "basically found that Mr. Valentine's allegations were unsubstantiated," and entered an order sealing the proceedings (Ex. 17). A circuit court order filed on May

18, 2006 permitted Sinardi to withdraw due to "irreconcilable differences" having arisen between Valentine and Sinardi (Ex. 18).

Attorney Daniel F. Daly was appointed to represent Valentine, effective February 23, 2006 (Ex. 19). On March 23, 2006, Valentine wrote a letter to the court, advising that he was not satisfied with Mr. Daly's lack of communication and seeking new counsel (Ex. 20). A similar letter was written on August 24, 2006, accusing Daly of being "another lazy, non-communicative, incompetent lawyer doing nothing" and expressing the need for "an eager qualified good postconviction advocate to help me litigate my case and not to be a facilitator nor an obstructionist" (Ex. 21). An amendment to the postconviction motion was filed by Daly on October 16, 2006 (Ex. 22). Valentine continued to express his displeasure at Mr. ***10** Daly's performance to the trial court, to the Department of Financial Services, and to this Court (Ex. 23).

On April 4, 2007, a Motion to Withdraw was filed by Mr. Daly (Ex. 24). The motion asserted that Daly had received numerous complaints and threats from Valentine, and while Daly denied the allegations of ethical misconduct, he agreed he must withdraw from further representation as his client had discharged him, creating an actual conflict of interest.

On August 10, 2007, a Notice of Appearance was filed, asserting that Valentine was then represented by Capital Collateral Regional Counsel for the Middle Region Bill Jennings, and his assistants Richard E. Kiley, James V. Viggiano, and Ali Andrew Shakoor (Ex. 25). This team of attorneys filed Defendant's Amended Motion to Vacate and Set Aside the Judgment of Convictions and Sentences on July 31, 2008 (Ex. 26). This motion supplemented the prior claims and offered additional allegations of ineffective assistance of counsel at the penalty phase of Valentine's trial, cumulative error, and possible incompetence at execution. Following response by the State, the court issued an order denying the claim of incompetence at execution, granting an evidentiary hearing on the claim of ineffective assistance of penalty phase counsel, and reserving ruling on the cumulative error claim (Ex. 27).

***11** On October 7, 2008, a letter was filed that Valentine had written to the trial judge, expressing his displeasure with CCRC-M as his attorneys. He complained that they only seemed interested in sentencing issues, they were rushing his case, had subjected him to an unnecessary battery of tests, refused to travel to Costa Rica at his request, and been disrespectful and sarcastic (Ex. 28).

The evidentiary hearing was conducted October 13-14, 2008, and continued on July 22, 2009. Evidence was offered on issues initially presented by Mr. Sinardi as well as the amended motion filed by CCRC-M. Valentine's motion was denied on July 2, 2010 (Ex. 29). On appeal, this Court affirmed the denial of postconviction relief. Valentine v. State, 98 So. 3d 44 (Fla. 2012). A state petition for writ of habeas corpus was denied in the same opinion. Valentine, 98 So. 3d at 57-58.

This Court's mandate issued on October 2, 2012. Valentine timely filed a Petition for Writ of Habeas Corpus in the United States District Court, Middle District of Florida, on January 3, 2013. Valentine v. Secretary, Dept. of Corrections, Case No. 8:13-cv-30-T-23TBM.

Although Valentine was personally served with the pleadings filed by his attorneys in federal court, he did not contact the district court with any complaint about counsel or the petition as ***12** filed until 2015. By that time, the State had moved to strike several claims in the petition, and the district court agreed that some of the claims were improperly presented and dismissed them.

Attorney Marie Louis Samuels-Parmer was also an attorney at CCRC-M during the time of Valentine's state and federal collateral proceedings, but she never appeared as counsel in his case. She left CCRC-M in April, 2014. On July 1, 2015, she filed a Motion for Substitution and/or Appointment of Conflict Free Counsel in the federal district court, alleging that her former colleagues at CCRC-M had not effectively represented Valentine in his state postconviction proceedings, as their presentation of Valentine's claim that his trial attorneys rendered ineffective assistance was incomplete and inadequate (Ex. 30). Although she did not identify any potentially meritorious claims that had been omitted from that litigation, she asked to be appointed as counsel for his habeas case in order to investigate and present new allegations of ineffective assistance of trial counsel.

The district court denied the motion to substitute counsel, finding the legal analysis to be flawed (Ex. 31). Ms. Parmer filed a motion to reconsider the ruling and Valentine filed a pro se motion repeating the request. On August 12, 2015, the district

court sua sponte issued an Order which stayed and administratively closed the case, in light of the United States Supreme Court's ***13** ruling to accept certiorari review in Hurst v. Florida, 135 S. Ct. 1531 (2015) (Ex. 32). The stay was dissolved on June 24, 2016, and Attorney Shakoor from CCRC-M filed a request on June 27, 2016, seeking to reinstate the stay until this Court resolved the case of Lambrix v. State, Case No. SC16-56, addressing Hurst, and also reiterating that Shakoor did not object to the change of counsel that had been requested by Ms. Parmer (Ex. 33). Ms. Parmer also filed a renewed motion to alter or amend the previous denial of her request for appointment (Ex. 34). On January 12, 2017, the district court granted Shakoor's motion, and again stayed and administratively closed the case (Ex. 35).

Additionally, on July 28, 2016, Valentine filed a pro se petition for writ of habeas corpus in the trial court below (Ex. 36). The petition asserted that relief was necessary because the State had continually misled the court and Valentine's jury about Livia Porche's true marital status and identity. The petition also claimed that the Chevrolet Blazer which Valentine had been convicted of stealing was actually his vehicle, under the community property laws of Louisiana, where he and Livia were living at the time of the purchase. Notably, trial counsel had advised Valentine as to why the argument on the Blazer would not succeed in a letter sent June 3, 1994, prior to trial (Ex. 37). In addition, although his initial postconviction attorney had advised him in 1999 that ***14** the "identity of your former wife was clearly established and the issue is barred" (Ex. 38), both the Blazer issue and the purported misconduct by the State with regard to the identity of Livia Porche were litigated in postconviction. See Valentine, 98 So. 3d at 50 n.8, 51-52. At any rate, this petition was stricken by the trial court on October 10, 2016 as an unauthorized, pro se pleading (Ex. 39).

Facts Supporting Nonfinal Review

On December 8, 2016, the trial court issued an Order requesting a response to a pro se motion filed by Valentine seeking to discharge CCRC-M based on a purported irreconcilable conflict and requesting the appointment of new, conflict-free counsel, "if possible, Miss Marie Louis Samuels-Parmer, Esquire" (Ex. 40, order with motion attached). The pro se motion claimed that the prosecutor had fabricated material evidence, violating Giglio v. United States, 405 U.S. 150 (1972), although the supposedly false evidence is not generally or specifically identified. Valentine also asserted that there was an actual conflict because CCRC refused to set forth meritorious issues which would defeat his conviction, although the supposedly meritorious issues are not generally or specifically identified. The motion did specifically allege that CCRC had refused to make corrections in his postconviction appeal and had changed the nomenclature of the ***15** exhibits, committed citation mistakes, and submitted incoherent arguments. He asserted that a Nelson hearing may be required, as CCRC had failed to appeal any of the issues denied at the Huff hearing "nor reinforced those granted." Citing Martinez v. Ryan, 132 S. Ct. 1309 (2012), he claimed an actual conflict "because CCRC rendered IAC during the initial post-conviction proceeding." He observed that he had written letters to CCRC telling them to cease and desist and that last year, in federal court, CCRC-M had ignored him when his Embassy tried to secure legal representation for him. Among the attachments to the motion was a list of 107 different people that Valentine had written to between 2012 and 2016, "soliciting legal help and or financial help," including at #102, Miss Marie-Louise Samuels Parmer.

The State filed a response, asserting that Valentine's motion should be denied as no actual conflict of interest had been identified, as required by Florida Rule of Criminal Procedure 3.851(b) (6) (Ex. 41). The State also observed that in the event the trial court found a conflict to exist, it would not be appropriate to appoint Ms. Parmer since she was employed by CCRC-M at the time of the alleged conflict. Attorney Shakoor filed a response which did not identify an actual conflict but indicated that in light of Valentine's refusal to meet with his CCRC ***16** attorneys or accept mail from them, he "does not disagree that 'conflict-free' counsel would be appropriate" (Ex. 42).

The trial court held a hearing on the motion on February 23, 2017 (Ex. 43). Ms. Parmer appeared at the hearing, and Valentine and Mr. Shakoor participated telephonically. Judge Sisco asked if Valentine was asserting a conflict with CCRC-M due to an allegation of a missed deadline in federal court, and Valentine responded no, that the conflict of interest existed because "they misrepresent me and what I needed to do in court. They have lied to me and have not been prepared," speaking of Mr. Shakoor. Valentine asserted that they only discovered two issues, and never touched the other eleven issues that were granted by Judge Barbas in postconviction.

The court then asked if Ms. Parmer was willing and available to take the case, and she indicated that she was. Ms. Parmer observed that she had filed pleadings in federal court seeking to be appointed in Valentine's case, and that Valentine was unable to retain her on his own. She advised that she was not currently on the state registry. Mr. Shakoor responded that,

while he disagreed with a lot of Valentine's assertions, it would not be proper for him to attack the merits of what his client had written. He suggested that Valentine would be best served by counsel with whom Valentine would be willing to meet and converse. Shakoor also noted that Valentine refused to come out for attorney visits and returned ***17** any mail they sent. He indicated he would like to discuss Hurst-related matters with Valentine.

Judge Sisco noted that, under the statute, if she did find an actual conflict, she was supposed to appoint another CCRC office. But practically speaking, when that was done in the past, she had received significant pushback based on the workload and having to travel the distance to Tampa for litigation. She concluded if there was an attorney competent and willing to be appointed, and the defendant wanted them appointed, "what's the problem?" The State responded, pointing out Valentine's history of dissatisfaction with his attorneys, and arguing that there had been no showing of an actual conflict of interest as required. The State also expressed concern that Ms. Parmer's prior employment with CCRC-M would create a basis for Valentine to come back to court in later years and seek new counsel.

The court asked Ms. Parmer about that issue, and Ms. Parmer suggested that Valentine would be willing to waive any potential conflict based on her prior employment. Ms. Parmer suggested there had been actual issues identified in the federal district court where the CCRC-M lawyers failed to conduct a reasonable investigation into guilt and penalty phase issues, but asserted that until she was appointed, she could not thoroughly investigate those claims. Ms. Parmer also advised the court that she worked ***18** part-time with CCRC-South, and that her efforts in this case started when she was contacted by the ambassador of Costa Rica. She represented that over the course of approximately two years, she had communicated with Valentine and discussed his case on a pro bono basis.

The court then addressed Valentine, making sure that he understood the only way she would consider appointing Ms. Parmer was if he agreed to waive any potential conflict, and he agreed to do so. Judge Sisco asked Valentine if Mr. Shakoor had properly represented that he refused to meet with them and returned their mail, and Valentine agreed. Valentine stated that he wanted nothing to do with CCRC-M, because they were liars. He claimed that they used the same arguments in every case and did not care what the real issues were. But, he continued, he and Ms. Parmer "talk all the time" and he felt very comfortable discussing anything with her. The court indicated that she was inclined "in the interest of equity" to appoint Ms. Parmer "just to keep the case moving," although she didn't know if it "technically" fit within the statute. She did not see a downside to appointing Ms. Parmer, and took a quick break to speak with her staff attorneys.

After the break, Judge Sisco asked Ms. Parmer if she would be assigned the case, should CCRC-South be appointed, and Ms. Parmer could not speak to that as an administrative issue. Parmer noted ***19** that she was already at full capacity with her caseload at CCRC-South. She offered to speak with CCRC-South about the issue and to seek to apply to get on the registry, and was willing to abide by JAC rates and rules, with which she was familiar. The court indicated she was "sympathetic to Mr. Valentine's intention" and really wanted him to have a lawyer that he was comfortable with and willing to communicate and work with. The court then scheduled a hearing for March 8, 2017, so that Ms. Parmer could look into the issues of representing Valentine through CCRC-South or as registry counsel.

The next hearing was held as scheduled on March 8, 2017 (Ex. 44). Mr. Shakoor was again present telephonically, and Judge Sisco indicated that she had not arranged for Valentine to be called, but she would get an update and set another hearing to keep Valentine informed of the proceedings. Ms. Parmer then reported that CCRC-S would not agree to assign Valentine's case to her, should that office be appointed, because she was already at maximum capacity with that office. She had researched getting onto the registry, and understood that once she had been appointed, they would execute a contract with her within 30 days. Thereafter, Judge Sisco determined that she would be qualified to serve under the registry, and put Ms. Parmer under oath to verify her background and experience. The State suggested that the court consider ***20** appointing Ms. Parmer for the limited purpose of determining whether an actual conflict existed prior to discharging CCRC-M, but Ms. Parmer expressed concerns about any limitations on her appointment and the court declined to impose any. Ms. Parmer reiterated that the ambassador had reached out to her in this case based on work she was doing in other cases, and the court found that was a very fact specific reason to appoint Ms. Parmer and discharge CCRC-M. Judge Sisco advised Ms. Parmer to submit a proposed order to the court reflecting her ruling. The court scheduled another hearing for March 23, 2017, in order to have Valentine on the phone once more to make sure there would be no further issues down the road.

Thereafter, Ms. Parmer submitted a proposed order, which Judge Sisco signed on March 16, 2017, and is the subject of this petition. The order declares that CCRC-Middle "has a conflict and is hereby discharged" (Ex. 1).

At the March 23, 2017, hearing, Valentine again appeared by phone and again agreed that he would waive any potential conflict with Ms. Parmer, and that he wanted her to be appointed (Ex. 45). Upon being advised that the State intended to seek interlocutory review of her order discharging CCRC-M, Judge Sisco scheduled a status hearing for June 8, 2017, providing this Court an opportunity for review.

***21 Argument**

I. The Order departs from the essential requirements of the law.

Florida law governing the appointment of new counsel in capital collateral proceedings is well settled and not subject to dispute. In accordance with Chapter 27 and Florida Rule of Criminal Procedure 3.851(b)(6), counsel can only be dismissed if Valentine demonstrates that an actual conflict of interest exists. As his motion failed to identify any actual conflict, it should have been denied.

In order to establish an actual conflict of interest, a defendant must show that his attorney is actively representing conflicting interests. § 27.703, Fla. Stat.; *Cuyler v. Sullivan,* 446 U.S. 335, 350 (1980); *Hunter v. State,* 817 So. 2d 786, 792 (Fla. 2002). Generally, such a conflict occurs when an attorney represents two defendants, and "one defendant stands to gain significantly by counsel adducing probative evidence or advancing plausible arguments that are damaging to the cause of a codefendant whom counsel is also representing." *Johnson v. State,* 78 So. 3d 1305, 1308-09 (Fla. 2012), quoting *Foxworth v. Wainwright,* 516 F.2d 1072, 1076 (5th Cir. 1975); *Scott v. State,* 991 So. 2d 971, 976-77 (Fla. 1st DCA 2008). A conflict can also arise based on excessive caseload, where the necessary prejudice has been ***22** demonstrated. See Public Defender, 11th *Circuit v. State,* 115 So. 3d 261, 279 (Fla. 2013). Valentine's request for new counsel below did not assert either multiple representations or an excessive caseload to establish a conflict of interest in this case.

Conflict can also be based on attorney having missed a deadline, or committing some other egregious error which would require the attorney to admit his own ineffectiveness in order to adequately represent the defendant. *Christeson v. Roper,* 135 S. Ct. 891, 895 (2015). In this case, Valentine's federal habeas petition was timely filed. He has not missed any critical deadline, and has not been precluded any review due to any actions or inactions of counsel. While Valentine asserts a possibility that some meritorious claim may have been overlooked, he has not identified any such claim, and apparently seeks new counsel now only as a precaution, seeking to investigate his case anew and to determine whether any such overlooked, meritorious claim exists. However, suspicion and speculation that an unidentified claim needs to be presented falls far short of the actual conflict required for the appointment of new counsel under Section 27.703 and Rule 3.851.

The response filed by CCRC-M in this case concludes that Valentine's current attorney "does not disagree that 'conflict-free' counsel would be appropriate," but it also does not identify ***23** any specific conflict. Instead, it cites to Valentine's refusal to meet with his attorneys or to accept legal mail from them. This confirms that Valentine is the one creating any potential conflict by his own actions. This Court should not countenance defendants seeking to manipulate the system by refusing to accept the attorneys appointed to represent them.

The provision of counsel for Valentine at taxpayer expense at this stage of his case is purely a matter of statutory grace. Valentine is well into the "postconviction capital collateral proceedings," to which he is entitled under Section 27.711(c). He has no constitutional right to counsel, since the Sixth Amendment only applies to the actual trial. Martinez v. Court of Appeal, 528 U.S. 152 (2000). However, the State of Florida has determined that all capital defendants at the postconviction stage should be provided counsel, "so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality with which they are entitled in the interests of justice." § 27.7001, Fla. Stat.

In order to achieve the goals identified in Chapter 27, the legislature has established strict limits on a capital defendant's statutory right to representation. In this case, despite the fact ***24** that Valentine's sentence was final long before Ring v. Arizona, 536 U.S. 584 (2002), and that he waived his right to a penalty phase jury, current counsel at CCRC-M secured a stay of his case in federal court and prepared a successive motion for postconviction relief to assert a claim under Hurst v.

Florida, 136 S. Ct. 616 (2016), on his behalf. Valentine refused to meet with his attorney to discuss the issue, and should not be granted new counsel to pursue this or any other potential litigation.

Moreover, Section 27.703(1) expressly requires that upon determining the existence of an actual conflict of interest, the sentencing court "shall... designate another regional counsel," and it is only after replacement regional counsel alleges an actual conflict that the court is authorized to appoint a member of the Florida Bar "who meets the requirements of Section 27.704(2)." While Judge Sisco indicated that she has previously received "pushback" when appointing other cases to other regional counsel offices, it was contrary to Chapter 27 and premature, at best, to appoint a Florida Bar member that was not even on the attorney registry before permitting one of the other regional counsels to determine whether an actual conflict with the replacement office existed.

The lower court's finding of a conflict is based entirely on Valentine's refusal to meet with his current attorneys. Such ***25** circumstances do not satisfy the standards of Chapter 27 or Rule 3.851. As in Miller v. State, 921 So. 2d 816 (Fla. 4th DCA 2006) and Boudreau v. Carlisle, 549 So. 2d 1073 (Fla. 4th DCA 1989), this type of self-created conflict should not be rewarded. The motion filed below seeking to discharge CCRC-M should have been denied, and this Court should vacate the order granting new counsel on this basis.

II. There is no adequate remedy on appeal.

In addition, there is no adequate remedy on appeal. As there is no currently pending postconviction action in the lower court, there is no basis for any appeal. While attorney Parmer has indicated she believes she will be able to establish that Valentine's prior collateral attorneys all performed deficiently, even such a finding would not result in the filing of a state motion for postconviction relief. As this Court has observed, *Martinez v. Ryan,* 132 S. Ct. 1309 (2012), is a decision which grants federal habeas petitioners a vehicle to review barred or unexhausted claims of ineffective assistance of counsel where the initial postconviction attorney has been deemed ineffective for failing to raise a meritorious issue. *See Finney v. State,* 192 So. 3d 36 (Fla. 2015); *Mann v. State,* 112 So. 3d 1158 (Fla. 2013); Gore v. State, 91 So. 3d 769, 778 (Fla. 2012) ("It appears that Martinez is directed toward federal habeas proceedings and is ***26** designed and intended to address issues that arise in that context"). It provides no basis for the filing of any new state court pleading.

Although Ms. Parmer indicated an intent to adopt Valentine's pro se habeas petition at the last status hearing without having reviewed it, once Ms. Parmer reviews the record and observes that the issues identified in that petition have been fully litigated, she will conclude that there are no reasonable grounds to pursue any issue and presumably decline to unethically file a frivolous pleading. Accordingly, no appellate review will be undertaken.

Clearly, if Ms. Parmer is successful in discovering a meritorious claim that was not previously presented, her only avenue of relief is in federal court. As no state court proceeding will be undertaken subject to an appeal, the improper order entered below discharging CCRC-M will be unreviewable, absent consideration of this petition.

Nature of Relief Sought

In conclusion, the State respectfully requests that this Honorable Court enter a ruling VACATING the Order issued below discharging CCRC-M and appointing attorney Parmer as counsel of record for Respondent Valentine.

Footnotes

1 The 73-page motion is included as an exhibit to this Petition; however, due to volume, only an index to the appendix is attached.

2 Although the postconviction record on appeal reflects that a number of hearings were held with Valentine present during this time, these do not appear to have been transcribed. Since Mr. Sinardi was later replaced as counsel, these hearings would have limited

relevance to this petition.

Appendix C Dr. Bryanna Fox Report

BRYANNA FOX, PH.D.
University of South Florida
Department of Criminology
Florida Mental Health Institute
4202 E. Fowler Avenue, Tampa FL
Email: bhfox@usf.edu ▪ Office: 813-974-4885

I. BACKGROUND

A. Qualifications

I am a Professor in the Department of Criminology, Courtesy Professor in the Department of Psychology and Mental Health, Law & Policy, and Faculty Affiliate in the Florida Mental Health Institute at the University of South Florida (USF) in Tampa, where I have worked since 2013. I am also the founder and Co-Director of the USF Center for Justice Research & Policy, as well as a former Special Agent in the Federal Bureau of Investigation (FBI). I earned my Ph.D. in psychological criminology from the University of Cambridge in England and served as a Research Fellow in the FBI's Behavioral Science Unit. I have attached my curriculum vitae (CV) detailing my additional qualifications and expertise. I am over age 21. I have personal knowledge of the facts contained in this report and am competent to testify about them.

Postconviction counsel for Mr. Glen Rogers, Ali Shakoor, Eric C. Pinkard, and the Capital Collateral Regional Counsel (CCRC)- Middle Region have requested that I provide expert evaluation of Mr. Rogers regarding the experience of childhood sexual abuse and its linkage to future developmental and behavioral outcomes. As I have conducted significant research on these specific factors (I am lead author on the landmark 2015 study establishing the link between adverse childhood experiences [ACEs] and increased risk of serious, violent, and chronic offending, as well as the specific linkage between childhood sexual victimization and increased risk of sexual and violent offending), I am considered a leading expert on this topic in the field.

B. Research Expertise

Research Expertise on Capital Sentencing Considerations: As demonstrated in my CV, I have extensive expertise and research experience on the adverse psychological, biological, and developmental factors associated with violence and prolific offending, with particular focus on the role of abuse, trauma, adverse childhood experiences (ACEs) and related mitigating considerations for severe forms of antisocial behavior.

In total, I have authored over 40 peer-reviewed studies, many of which are featured in top-tier high impact journals such as *Psychological Bulletin* (flagship journal of the American Psychological Association), *Criminal Justice & Behavior* (official journal of the International Association for Correctional and Forensic Psychology), *Development and Psychopathology*, *Child Abuse & Neglect*, *Sexual Abuse*, and the *Journal of Research in Crime and Delinquency*. I am also the author or lead editor of 5 books and textbooks, and have published 9 chapters in books and handbooks published by Cambridge and Oxford University Presses, and others.

Additionally, I currently serve as Co-Editor of *Justice Quarterly*, a prestigious peer-reviewed academic journal and flagship outlet of the Academy of Criminal Justice Sciences, and invited member of the Editorial Boards for *Criminal Justice & Behavior, Criminology & Public Policy, Youth Violence & Juvenile Justice, Policing: An International Journal,* and the *Journal of Criminal Justice.* I am also the former Associate Editor of the *Journal of Criminal Psychology.* I have also been awarded more than $4.2 million in funding to date for my research from agencies including the U.S. Department of Justice's Bureau of Justice Assistance, National Institute of Drug Abuse, and the Florida Department of Juvenile Justice.

My research expertise and scientific contributions have been recognized with numerous awards and honors, as shown on my CV. Specifically, I was the recipient of the 2017 *Early Career Award* from the *American Society of Criminology's Division of Developmental and Life-Course Criminology*, for my "substantial contributions to the DLC field", in honor of my research examining the risk and mitigating factors for prolific and violent offending. I received the 2014 *Excellence in Law Enforcement Research Award* from the *International Association of Chiefs of Police* for my work developing and implementing an evidence-based crime prevention strategy at the Daytona Beach Police Department. I was also the recipient of the 2014 *Nigel Walker Outstanding PhD Award* from the *University of Cambridge Institute of Criminology* in recognition of my doctoral research where I developed and implemented new psychological and behavior profiles of offenders in active police investigations. Recently, my research was honored with the 2018 *Outstanding Paper Award*, for my article on the key predictors of sexual and non-sexual offending in the *Journal of Criminal Psychology,* and the 2019 *Outstanding Research Achievement Award* from the *University of South Florida*. Additional awards and honors are noted in my CV.

C. Disclosure

Prior to being retained by the CCRC and conducting my official interviews of Mr. Glen Rogers and documents and testimony associated with his case, I advised that while I was consulting for the postconviction counsel, I would follow the evidence no matter the direction, regardless of whether it was favorable to Mr. Rogers' case.

D. Evaluation Procedures

As part of my evaluation, I interviewed Mr. Glen Rogers on multiple occasions, and examined additional evidence and records to assess reliability and corroboration in this case. I have also reviewed the best evidence from leading research available on the relationship between childhood sexual abuse and future developmental and behavioral issues, including violence. In light of this effort, the findings and opinions herein are offered with a high degree of scientific certainty.

E. Interview Procedure

On September 5, 2019 and February 26, 2020, I conducted a comprehensive in-person interviews of Mr. Glen Rogers at the Union Correctional Institution (UCI) in Raiford, Florida. These interviews lasted approximately 10.5 hours, and were not tape recorded, per UCI regulations. During the interviews I administered multiple evidence-based and validated assessments. Of most relevance to this report is the Adverse Childhood Experiences (ACE) questionnaire (Felitti, Anda, Nordenberg, Willianson, Spitz, Edwards, Koss, & Marks, 1998; Anda et al., 2010), wherein experiences of childhood sexual abuse are specifically examined.

F. Records and Documents Reviewed

The following records and documents were provided to me by CCRC and reviewed for preparation of my assessment in this case:

- Statement of Clay W. Rogers (taken February 26, 2020)
- Report on Glen Rogers by Clemens Bartollas, Ph.D.
- School records for Glen Rogers
- Newspaper articles on sexual abuse at the Training Institute of Central Ohio (TICO)
- Recorded interview of Glen Rogers taken by Dan Sikes, a private attorney to Mr. Rogers
- Correspondence with Clay W. Rogers
- Correspondence and evidence from David Monaghan, a documentary filmmaker and Rogers family historian

II. ASSESSMENT OF CHILDHOOD SEXUAL ABUSE

A. Summary of Mr. Rogers' Extensive Sexual Abuse Victimization in Childhood

Child sexual abuse (CSA) can be broadly defined as "any sexual activity with a child where consent is not or cannot be given due to their age" (Berliner & Elliott, 2002, p. 55). Using the ACE questionnaire, we assess sexual abuse with the item: "Did a parent, guardian, or person at least 5 years older than you ever touch or fondle you in a sexual way, have you touch their body in a sexual way, or try to or actually have oral, anal, or vaginal sex with you?"

Based upon my interview with Mr. Rogers as well as considerable corroborating information from his brother Clay Rogers, news reports of sexual abuse at the Training Institution of Central Ohio (TICO) which was the residential juvenile detention facility Mr. Rogers was sentenced to as a juvenile during the 1970's, and other reports such as from the family historian and attorney, it is **clear that Mr. Rogers suffered significant and highly traumatic sexual abuse from multiple adults, caregivers, and authority figures as a child.**

B. Sexual Abuse by Staff at the Training Institute of Central Ohio (TICO)

During our interview, Mr. Rogers described in graphic detail the substantial sexual abuse he experienced in childhood as a ward at Training Institute of Central Ohio (TICO). He reported that sexual abuse and sexual humiliation was commonly experienced by youth at the reform schools he attended, including TICO. These reports of childhood sexual abuse at TICO have been independently corroborated by media investigations and those Mr. Rogers confided in regarding his abuse at TICO.

Most notably, Mr. Rogers reported being sexually assaulted on multiple occasions by guards while under the care of the Ohio Department of Youth Services, at TICO. Specifically, Mr. Rogers recounted in detail the sexual abuse and assaults he experienced by Percy Jackson, a correctional officer at TICO. When Mr. Rogers was approximately 13 to 14 years old, he was sent to TICO for residential placement after being referred for a juvenile offense. According to Mr. Rogers, Jackson initially began his sexual abuse by taking nude photographs of boys at TICO, including Mr. Rogers. Jackson would buy Mr. Rogers (and other boys) sodas, and walk with him to a secluded area along the fence line of the TICO property, or to the print lab which was generally unoccupied, or the employee lounge which was empty on weekends. Mr. Rogers specifically noted that Jackson would photograph his "private parts" and he felt humiliated but was too scared to stop him. Mr. Rogers stated that at first he felt like he was a "special kid" due to the attention he received, which was a juxtaposition to the lack of positive attention he received from his parents. However, it soon became clear that he was targeted due to the clear lack of attention and oversight from parents, as the boys targeted by the TICO guards almost uniformly did not receive visits from family on the weekends, received little family support, and therefore the guards likely knew they were most vulnerable and safe to prey upon. Furthermore, due to the power imbalance between Mr. Rogers and Jackson, Mr. Rogers did not feel he could stop Jackson from the sexual abuse.

Jackson sexually assaulted Mr. Rogers at his home (off-campus from TICO) on two (2) occasions. Taking juvenile detainees off-campus was not permitted, but Jackson would tell the other guards he needed Mr. Rogers to mow his grass, and would not sign him out of the facility. As soon as they left TICO property, Jackson re-handcuffed Mr. Rogers and drove him to his house, a red brick single story home. Mr. Rogers stated that the living room was the first room upon entering the front door, and the bedroom Jackson brought him to was down the hallway on the right. Once inside the bedroom, still handcuffed, Jackson would kiss Mr. Rogers on his mouth, face, and body. Mr. Rogers recalled how Jackson's mustache "tickled" him. Jackson then pushed Mr. Rogers onto the bed, and because Mr. Rogers was handcuffed, he could not fight back. Jackson held Mr. Rogers down and

raped him anally. Afterwards, Jackson stated: "Oops, I got some dookey on me now."

After the second sexual assault Jackson committed against Glen at his home, Mr. Rogers stated that he was able to escape. He ran out of the house, and tried to hide from Jackson and the guards. However, the TICO staff were able to locate him the same day. Mr. Rogers stated that they put him in a straight jacket while he was still naked and brought him back to the TICO facility. He was then "hooked up to a machine" which "shocked his brain". Mr. Rogers was also given pills and left in solitary in the straight jacket for days. He stated that after this event, he was never sexually assaulted by Jackson, but was treated far worse by the guards and punished by physical labor for the duration of his sentence at TICO.

These experiences include being forced by the correctional staff to "stand naked on a box in the hallway, walk naked down a hallway, clean the latrines naked, scrub the floors naked". Mr. Rogers stated that if a boy refused to do any of these, they got a "blanket party", which is when the boy would be put under a blanket and hit with bars of soap by the correctional staff.

Clay recounted in his statement that Mr. Rogers reported to him in childhood how he was molested by staff at the Training Institute of Central Ohio (TICO), a juvenile correctional facility that Mr. Rogers was sentenced to attend on three occasions under the age of 18. As Clay stated (p. 3):

> "Once when I picked Glen up from a stay at TICO, among his bag of belongings was a note that Glen said came from one of the guards, which read, 'Get it up, keep it ready, I'll be right back.'
>
> I should point out that during this period when Glen was being taken advantage of sexually, our father was incapacitated after a heart attack, not that he'd ever been a positive male role model for Glen."

This account of the sexual abuse Mr. Rogers experienced at TICO is corroborated independently by the personal experiences of Dr. Clemens Bartollas, former employee at TICO in the 1970's when Mr. Rogers was incarcerated and Professor of Criminology at the University of Northern Iowa. In his report, Dr. Bartollas stated that during his fourth year working at TICO, John Hall, social worker in the orientation cottage at TICO, reported to him that:

> "Percy Jackson and Abdullah Talib were "sexually violating students in the orientation cottage. Upon further investigation, we discovered that a female psychologist from Fairfield School for Boys, the feeder institution for TICO, would contact Jackson and Talib informing them which youths coming to TICO were vulnerable to sexual exploitation. The State Patrol was called in. Jackson and Talib were suspended without pay and were eventually released from employment." (p. 4).

The accounts of correctional officers sexually assaulting boys at TICO were further corroborated by newspaper reports. The *Columbus Dispatch* reported on February 15, 1973 that the "State Highway Patrol will investigate complains that two 17-year-old boys at the Training Institute of Central Ohio (TICO) were sexually assaulted" (p. 29). Jackson was later indicted for on four counts of sodomy and one count of solicitation to engage in an act of sexual perversion. While both of the victims who reported the sexual abuse had their "statements given during polygraph examinations substantiated accusations against Jackson", while Jackson's two examinations were "inconclusive".

According to the research conducted by David Monaghan, a documentary filmmaker, a total of 13 boys were reportedly sexually abused by Percy Jackson and other correction officers at TICO in the 1970's, when Mr. Rogers was in attendance.

The level of abuse at TICO was so pervasive and well-documented that the U.S. government eventually took over TICO and other Ohio reform schools due to the "institutionalized abuse" they perpetrated on the youth (United States v. Ohio, USDC, S.D. Ohio, Case No. 2:08-CV-475).

Furthermore, Mr. Rogers's older brother Clay independently reported to Mr. Monaghan that he was also sexually abused by staff at TICO.

Finally, Dr. Bartollas stated that based upon his experience at TICO and expertise as a professor of criminology: "*There is no way the state of Ohio did not fail this youth (Glen), and this certainly should contribute to a mitigation of sentence"* (p. 5).

Together, these independent corroborating reports of sexual abuse at TICO provides considerable evidence of childhood sexual victimization by Mr. Rogers by correctional officials.

C. Sexual Abuse of Mr. Rogers By Adult Men in Childhood

During the interview with Mr. Rogers, he also stated that at 12 years old he was taken to the homes of three older men in town who would take photographs of Mr. Rogers in sexual poses while naked. Mr. Rogers reported that he agreed to do this because two older women, Carla and Vanessa, pressured him to do so, and he feared that his brother Clay would hurt him if he didn't do it. During these child pornography events, Mr. Rogers reported that Carla and Vanessa would "rub on him to get him hard" for the photos the older men would take. Mr. Rogers reported that the older men taking photographs of him also touched him in a sexual way, and that Carla and Vanessa told him to let the man do it because it "wouldn't do any harm". Mr. Rogers said that after these events he would feel "humiliated, nasty, and dirty".

This account of sexual victimization was independently supported by details in the statement prepared by Clay Rogers, where he stated that Mr. Rogers was sexually victimized by multiple older adult males as a child. Specifically, Clay reported (p. 3):

> "Carla and Vanessa would also take Mr. Rogers to one of Vanessa's paramours, who went by the name of 'Bear.' Bear would make 12-year-old Mr. Rogers take part in sexual acts and take pictures of him, according to Mr. Rogers and Carla. Bear was trading in child pornography. Bear would take pictures of children (including Mr. Rogers) for child porn magazines. Mr. Rogers told me that Bear would touch him as he positioned him for photographs. These acts of child pornography with Bear happened several times."

Clay Rogers also stated that Mr. Rogers was sexually abused and victimized by another older man as a child. Specifically, Clay stated (p. 3):

> "Another older man who would sexually molest Glen was a newspaper reporter who lived in a big white house on the corner of Park Avenue and Eaton Road; there used to be a school across the street but it's since been torn down. Glen would do small jobs and yard work at the reporter's house and I would accompany him on occasion…. This reporter would show Glen X-rated movies and sexually molest him."

Clay Rogers also disclosed that he was also sexually abused by this man, stating that "the reporter once 'felt me up,' after inviting me in for some fresh lemonade." (p. 3)

Further, Clay reported that "another older man who would molest Glen and other kids in our community was named Paul Lee Sedowski and he drove a fancy convertible." (p. 3).

In addition to the three adult males that Mr. Rogers and Clay both stated had sexually assaulted, molested, and sexually abused Mr. Rogers as a child, Mr. Rogers also stated that another man named Robert Liddil, a convicted pedophile[1], began sexually abusing him at age 10. Mr. Rogers stated that he

[1] Robert Liddil pled guilty to "sexual imposition", though this case was not directly related to Mr. Rogers. See *State of Ohio v. Robert Liddil, CR76-02-0058*, Butler County, Ohio (February 19, 1976).

met Liddil one day when walking home from the Grand Hotel, and Liddil offered Mr. Rogers a job sweeping the front of his store. Mr. Rogers accepted, and was paid about $4 each time he cleaned. Shortly after, Liddil told Mr. Rogers that he needed his house cleaned, and would leave Mr. Rogers there. When he came back, Liddil would sexually abuse Mr. Rogers by "playing with" him, "putting his mouth on" him, and touching him "all the time". Mr. Rogers stated that when he was reluctant to allow Liddil to do this, Liddil would say, "I'm really good to you, why don't you do this". Mr. Rogers said that he felt guilted into it by Little.

One day when Mr. Rogers was about 12 years old, Liddil was almost caught in the act sexually abusing Mr. Rogers. Mr. Rogers had previously been doing the dishes and forgot to turn the water in the sink off when Liddil began making sexual advances on Mr. Rogers. The water flooded into the barber shop located on Main Street in Hamilton, when the owner came upstairs to investigate, and saw Mr. Rogers and Liddil together. Mr. Rogers said the barbershop owner was extremely suspicious as Little did not answer the phone or come to the door when he knocked, and was flustered when the owner entered his home and saw him alone with Mr. Rogers. Mr. Rogers did not think that the barbershop owner ever reported what he saw to police.

Mr. Rogers also noted that Liddil was a mentor to youth at the local YMCA. However, when they were alone they would "turn the lights off and masturbate each other". Liddil would show the boys how to do it, if they didn't know. Liddil had Mr. Rogers attend these and had Mr. Rogers participate. Mr. Rogers believes that Detective Thomas Garrett of the Hamilton Police Department had photos of boys with Liddil "at a lake with hard ons". Mr. Rogers stated that Liddil stopped his sexual abuse one day when Mr. Rogers returned to Hamilton after spending time at reform school, and believes that he was too old for Liddil. That was the last time Mr. Rogers saw him.

Liddil was apparently arrested after he married a woman and had two children with her. One day she caught one of her sons masturbating and asked how he learned it, and he said his father (Liddil) did it to him.

Additionally, Clay stated in his statement that he believed their Uncle Harold, who lived in Hamilton, was sexually abusing Mr. Rogers, as he "particularly had an interest in Glen and would pick him up all the time and leave us other children at home, as he'd keep Glen all weekend." (p. 3).

Together, these independent corroborating reports of sexual abuse provide considerable evidence of sexual abuse and pornography committed by adult males on Mr. Rogers during childhood.

D. Sexual Abuse of Mr. Rogers by Adult Females During Childhood

Mr. Rogers independently reported during his interview that as early as 10 years old, he was "with older women" who would have sex with him. Mr. Rogers recalled that one woman, whose name was Janis or Mary and approximately 30 years old (meeting the Ohio definition for statutory rape) lived on Park Avenue in Hamilton, and met Mr. Rogers when he was walking by her house one day. She offered him a soda, invited him into her home, brought him to her bedroom, and then "showed him how to have sex." Mr. Rogers stated that he stayed with her overnight on many occasions (his parents did not notice or mind his absence), and that he was happy he "had someone taking care of him." This "relationship" ended when Mr. Rogers went to her house one day, and another boy who looked to be Mr. Rogers's age was there. Mr. Rogers stated that he "tore the house up" because he was so mad. Mr. Rogers reported that the next day the house was empty and he never saw either the boy or woman again. Mr. Rogers believed that his father may have found out about her actions and scared her away. Mr. Rogers said that he felt abandoned when she left.

These events were corroborated by Clay Rogers (pages 2-3 of his statement), where Clay witnessed Mr. Rogers experience sexual abuse by at least two older women (at least 5 years his senior), when Mr. Rogers was between 10 to 13 years old. According to Clay Roger's statement, an older woman named Carla Taggert and her cousin Vanessa Auer were in their mid-20's when Mr. Rogers and Clay would "go to their home to party with them, using drugs and having sex" (p. 2) At this time, Mr. Rogers was approximately 12 years old. Clay also reported that at age 12 he saw Mr. Rogers "having sex with both Carla and Vanessa on different occasions." (p. 3). In Ohio, this meets the legal definition of statutory rape (Ohio Rev. Code Ann. §§ 2907.01, 2907.04, 2929.14, 2929.18, 2929.23, 2929.28 (2018)).

Mr. Rogers also shared information that was independently reported by Clay, as he stated that he had sex with an older woman named Vanessa, who was related to or friends with Clay's girlfriend Carla, when he was approximately 12 years old. Given that this act meets the legal definition of statutory rape, Mr. Rogers was a victim of a sex crime at 10 years old.

E. Overall Assessment of Childhood Sexual Abuse Experienced by Mr. Rogers

Based upon the overwhelming severity, frequency, and corroboration of the sexual abuse Mr. Rogers experienced before age 18, there is little doubt that Mr. Rogers experienced severe childhood sexual abuse (CSA). It should also be noted that this extreme level of childhood sexual abuse is incredibly destructive, impactful, and has severe detrimental outcomes for those who experience it. Moreover, it is unusual to have childhood sexual abuse as well documented and corroborated as in this case, underscoring the prevalence and severity of the experience.

III. RESEARCH LINKING CHILDHOOD SEXUAL ABUSE AND FUTURE VIOLENCE

A. Summary of Research on Childhood Sexual Abuse and Future Violence

In brief, childhood sexual abuse is one of the most devastating and impactful forms of trauma, particularly if it is repetitive, chronic, and spans multiple domains such as family, caregivers, and authority figures- as Mr. Rogers experienced. The outcomes strongly associated with childhood sexual abuse are discussed in further detail to follow, however, it is important to stress early and often how damaging and life altering the trauma associated which childhood sexual abuse is on the development, psyche, health, and behavioral outcomes for these victims (see *Fox et al., 2015; Muniz et al., 2019; Miley et al., 2020*).

Specifically, research on the relationship between childhood sexual abuse and future offending is well established, with studies consistently indicating that youth who are victimized are at higher risk of offending in adolescence and adulthood *(Broidy, Daday, Crandall, Klar, & Jost, 2006; Jennings, Higgins, Tewksbury, Gover, & Piquero, 2010; Klevens, Duque, & Ramírez, 2002; Lauritsen & Laub, 2007; Maldonado, Molina, Jennings, Tobler, Piquero, & Canino, 2010; Mustaine & Tewksbury, 2000; Schreck, Stewart, & Osgood, 2008; Schreck, Wright, & Miller, 2002)*. Specifically, research indicates that childhood victimization significantly raises the risk of future violent, sexual, and prolific offending (*Cops & Pleysier, 2014; McGloin et al., 2011; Posick, 2013; Silver et al., 2011)*. Felson and Lane (2009) found that sexual and physical abuse significantly increased the risk of committing future sexual offenses and violent crime. Fox (2017) found that sexual victimization was one of a number of traits distinguishing sexual offenders from non-sexual offenders. Fox et al. (2015) found that those who experienced physical abuse in childhood were 58% more likely to become serious, violent, and chronic offenders. This empirical overlap between victimization and offending, known as the victim-offender overlap, is so consistent that it has been referred to as one of the few "facts" in criminology *(Gottfredson, 1981; Jennings, Piquero, & Reingle, 2012; Maxfield, 1987; Reiss & Roth, 1994)*.

B. Causal Mechanisms Linking Childhood Sexual Abuse and Future Violence

The causal link between early trauma and antisocial behavior and violence is widely studied, and consistent in findings. Research in this area shows that childhood sexual abuse (CSA) affects the biological and psychological development of the victimized child by causing neural impairment disrupting the regulatory processes central to maintaining their normal wellbeing *(Cicchetti & Rogosch, 2012)*. For instance, research suggests that traumatizing events, such as sexual victimization as a child, may cause chromosome damage *(Shalev et al., 2013)* and functional changes to the developing brain *(Anda, Butchart, Felitti, & Brown, 2010; Cicchetti, 2013; Danese & McEwen, 2012; Teicher et al., 2003)*.

CSA also leads to a heightened neural state triggering the brain to excrete adrenal steroids, growth hormones, amino acids, and other stress mediating chemicals known as the allostatic response (i.e. fight or flight) *(Garland, Boettiger, & Howard, 2011)*. While these stress-managing chemicals may be beneficial when produced in short, confined bursts, a prolonged chemical response resulting from chronic stress such as ongoing childhood abuse, called an allostatic load, may result in permanent chemical elevations and other destructive physiological and behavioral responses *(Cicchetti & Toth, 2005)*. As a result of these neurological and psychological changes, the victimized child is prone to violence in a number of ways.

First, CSA leads to physiological changes resulting from the allostatic overload, which may cause extreme, and potentially violent, reactions to even trivial stimuli. This is because the body has a dysregulation of the hypothalamic-pituitary-adrenal (HPA) axis, leading to chronic hyperarousal. Chronic hyperarousal is a state of heightened physiological and psychological tension. It's characterized by symptoms such as hypervigilance and exaggerated startle response, heightened sensitivity to perceived threats, impulsivity, and difficulty in modulating emotions. Combined with unresolved anger, this can result in explosive outbursts or violent acts with minimal provocation.

Indeed, the higher inclination toward violence could result from problems with affect regulation among sexually abused children. Specifically, abused children experience difficulties recognizing, expressing, and understanding their emotions *(Toth, Harris, Goodman, & Cicchetti, 2011)*. These children exhibit more aggressive and reactive behavior and are more predisposed to detect angry emotional expressions. A study by Howes et al (2000) also indicated that abusive families also have more difficulty regulating anger in their children. These effects can produce dramatic changes on the emotional development of the child, which likely underlie the heightened risk of future violent behavior. Consequently, youth who experience CSA, particularly male victims, may be more likely to engage in violent or criminal behavior, particularly as the trauma is more likely to be untreated.

Second, youth who are victims of CSA often suffer extreme depression, anxiety, and other mental health issues due to the CSA, which often results in maladaptive coping mechanisms. Maladaptive coping mechanisms are ways of dealing with stress, emotions, or difficult situations that may provide short-term relief but are ultimately harmful or unhelpful in the long run. This outcome is due to the substantial trauma that CSA causes, coupled lack of reporting/awareness of the victimization by caregivers, leading to lack of treatment, unprocessed trauma, and development of coping strategies in unhelpful and sometimes harmful ways. For instance, research indicates that CSA typically results in self-injury, substance misuse, risky sexual behaviors, and aggression, which in turn increases the risk of violence and other externalizing behavior. To cope, many CSA victims turn to drugs or alcohol to numb their nervous system. Unfortunately, substance use lowers inhibitions and can amplify aggressive behavior, especially when combined with trauma triggers.

The significant and devastating effects of childhood sexual abuse have been clearly and incontrovertibly established in the scientific literature including medicine, psychology, public health, criminology, and more. The number and severity of negative outcomes associated with traumatic experiences are staggering. According to the American Psychological Association's Presidential Task

Force on Violence and the Family (1996), abused children are significantly more likely to display a host of detrimental developmental outcomes in childhood through adulthood including violence and criminal behavior. Most relevant to the present case are two of the Task Force's final conclusions:

1. Childhood trauma and abuse can seriously affect a person's physical and intellectual development, and can lead to difficulties in self-control.
2. Abused and maltreated children are more likely than non-abused children to be arrested for delinquency, adult criminal behavior, and violent criminal behavior.

Indeed, as documented earlier in this report, considerable research has shown that childhood trauma significantly raises the risk of future antisocial outcomes, most notably including violence and criminal behavior (*Fox et al., 2015; Reavis et al., 2013*).

Specifically, research funded by the U.S. Department of Justice on the long-term implications of abuse for over 1,000 children found that those who were abused and/or neglected as children were 480% more likely to be arrested as juveniles, 200% more likely to be arrested as adults, and 310% more likely to commit a violent crime in adulthood, compared to those who were not abused or neglected in childhood (*English, Widom, & Brandford, 2001*).

Similarly, **results of a large meta-analysis**, or a study of all available research on a topic, show that adult male sexual offenders were more than **300% as likely to have been sexually abused in childhood** compared to non-sexual offenders (see *Reavis et al., 2010*), and **sexual abuse significantly raises the risk** of general involvement in the justice system (*Cavaiola & Schiff, 1988*), and **future sexual and violent offending** (*Fox, 2017; Fox et al., 2015*).

In a recent study on the increased risk of violence and sexual offending among all adolescents referred to the Florida Department of Juvenile Justice (FDJJ), it was found that youth who experience physical and sexual abuse in childhood have a significantly higher risk of engaging in these analogous illegal acts in adolescence, compared to any other type of offending behavior, even after controlling for all other major criminogenic, psychological, and demographic risk factors (Miley et al., 2020). Specifically, it was found that those who experienced physical abuse as children had the highest risk, out of any youth referred to FDJJ for a delinquent offense, of engaging in violent offenses themselves later in adolescence (Miley et al., 2020). This finding is consistent with prior studies on forensic samples (*Cuevas, Wolff, & Baglivio, 2019; DeLisi et al., 2017; Trulson, Haerle, Caudill, & DeLisi, 2016*). A potential explanation for this finding is that these youth are learning to deal with conflict through violence, in ways that were modeled to them, and are therefore engaging in the same maladaptive behaviors in their own life.

Miley and colleagues (2020) also found that youth who experienced sexual abuse in childhood had the highest risk of committing future sex-related offenses, but were also at higher risk of committing future violence. This result may be reflective of the fact that the experience of sexual abuse at a young age can potentially normalize the behavior for the victim, increasing the chance that they may later imitate the behavior themselves. These new findings echo the results of prior research conducted on the overall effects of childhood abuse and trauma on antisocial behavior using a wide variety of samples from community members and incarcerated offenders.

This is critically important to the current case, as it suggests that negative and traumatic experiences in childhood are not only frightening and harmful to youth, but they also systematically increase the risk of victimized children engaging in violent and criminal behavior in the future.

However, it is prudent to note that not all children who are victimized will commit crimes or violence later in life: research has also found that certain youth may develop resilience through their victimization experience. For example, while some sexually abused children will later victimize others, not all children exposed to such experiences do this *(Brownlie, 2001; Gilligan, 2000*). Importantly, research indicates that several intervening factors and protective variables may disrupt the victim-offender overlap if present. These factors include parental supervision and bonds to the

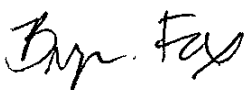
community (Berg, Stewart, Schreck, & Simons, 2012), victim-offender relationships (*Zimmerman, Farrell, & Posick, 2017*) and underlying rationality/offender decision-making processes (*Averdijk, Van Gelder, Eisner, & Ribeaud, 2016*).

Although no risk factor can perfectly predict an individual's future behavior, the overwhelming body of research indicates that childhood sexual abuse and victimization substantially increase the risk of the most severe forms of antisocial behavior including violence and sexual offending.

In this case, it appears that Mr. Glen Rogers experienced severe and repetitive sexual abuse in childhood and is at considerably higher risk of violence and aggression. While it is impossible to predict the behavior of any person with perfect accuracy, given the overwhelming rate and severity of abuse that Mr. Rogers has experienced, and the known correlates of these victimization experiences established by decades of scientific research, these experiences should be emphatically be considered a mitigating factor in this case.

This report and the findings and opinions therein are offered with a high degree of scientific certainty.

Sincerely,



Bryanna Fox, PhD
April 25, 2025

Appendix D Dr. Joel Zivot Affidavit

AFFIDAVIT OF JOEL ZIVOT, M.D., FRCP(C), MA, JM

April 18, 2025

1. I am an associate professor and senior member of the Departments of Anesthesiology and Surgery, Emory University School of Medicine, in Atlanta, Georgia. I am the former Medical Director of the Cardiothoracic Intensive Care Unit at Emory University Hospital. I am also the former fellowship director for training in Critical Care Medicine. I hold board certification in Anesthesiology from the Royal College of Physicians and Surgeons of Canada and the American Board of Anesthesiology. I am board-certified in Critical Care Medicine from the American Board of Anesthesiology. I have an MA in bioethics and a Master of Law (JM).

2. I have practiced anesthesiology and critical care medicine for 30 years, during which time I have personally performed or supervised the care of over 50,000 patients.

3. I hold a medical license from the states of Georgia and have held unrestricted medical licenses in Ohio, the District of Columbia, Michigan, and the Canadian provinces of Ontario and Manitoba. I also have a license to prescribe narcotics and other controlled substances from the US Drug Enforcement Administration (DEA).

4. I have been consulting with attorneys for Florida death row prisoner Glen Rogers regarding Mr. Rogers medical condition and the risks attendant to executing him by lethal injection.

5. I became involved in Mr. Rogers case at the request of his attorneys. I agreed to do a preliminary review of his medical records so that I could provide an affidavit that would allow the attorneys to seek sufficient time to enable a proper evaluation of the risks posed to Mr. Rogers if executed according to Florida's lethal injection protocol.

6. My opinion is based on the review of three documents supplied to me by attorneys for Mr. Rogers. One document is entitled "Rogers Medical Records" and is a 498-page pdf. The second document, called "Rogers Medical Records Index, " is a 6-page pdf. The third document is entitled "Florida Department of Corrections: Execution by lethal injection procedures." This is accompanied by a letter dated February 18, 2025, and signed by Secretary Ricky Dixon. It attests to the readiness of the Florida Department of Corrections to execute by lethal injection.

7. From the documents I reviewed, I observed that Mr. Glen Rogers is a 62-year-old man who suffers from **porphyria**, a group of genetic metabolic disorders that cause liver and bone lesions due to the buildup of toxic porphyrin precursors — the specific genetic defect in porphyria results in a deficiency of the enzyme responsible for synthesizing heme. The buildup of porphyrin precursors in the liver can lead to a range of symptoms, including neurological problems, skin photosensitivity, and liver dysfunction. Based on the history, Mr. Rogers likely suffers from acute hepatic Porphyria based on the accumulation of the porphyrin precursors in his liver. This accumulation has resulted in liver damage, including cirrhosis, liver fibrosis, and possibly liver cancer.

8. 7. Porphyrin is an organic compound found in the body. An example of a porphyrin is Heme, the precursor for hemoglobin, the iron-containing oxygen transport compound

found within every red blood cell in the human body. Heme is also the precursor for other critically essential compounds, such as cytochromes, which are critical in creating the fuel that drives all cellular function. The metabolic pathway from heme to hemoglobin and other compounds is a complex and highly enzymatically regulated series of steps. Breaks in these regulatory steps can result in the accumulation of Porphyrin, which is toxic to the body in several ways. Regulatory breaks can be induced by exposure to various medicines that might be given to a person as a treatment for a medical condition, or in the case of Mr. Rogers, by the chemicals used in the lethal injection protocol.

9. The broken Heme regulation in porphyria is associated with a series of clinical findings that can be life-threatening. These findings include severe abdominal pain, seizures, hallucinations, anxiety, paranoia, and an accelerated heart rate. It is critically important to understand that chemically induced Porphyria is not idiosyncratic. Exposure to the chemical that breaks the regulatory pathway will lead to Porphyria attacks, and the greater the dose of the chemical, the more severe the attack.

10. A review of the Florida lethal execution protocol involves the sequential intravenous delivery of three drugs to a person to kill by execution. The first drug is Etomidate, followed by Rocuronium Bromide, and then Potassium Acetate. Etomidate is a non-barbiturate sedative hypnotic drug used in anesthesiology practice in several different situations. Etomidate metabolism is primarily hepatic which means it will accumulate rapidly in the liver. Etomidate is not classically considered an analgesic (used for the control of pain). Neither of the subsequent drugs used in the protocol is analgesic. Rocuronium Bromide is a rapidly acting paralyzing drug and will paralyze any

individual, in this case the prisoner, making it impossible to communicate to observers that pain is occurring. Potassium Acetate is a drug that regulates the contraction of the heart. In large doses, Potassium Acetate is painful when injected and will cause the heart to cease functioning.

11. Studies have shown that etomidate can induce Porphyria attacks in susceptible individuals. In the Florida execution protocol, the amount of etomidate given is up to 10 times the amount that might be injected in a clinical setting. The consequence of this massive quantity on porphyrin accumulation and the ensuing negative symptoms would be profound. As rocuronium bromide is injected after etomidate, the subsequent paralysis will mask the severe and terrifying pain and other adverse effects from the etomidate-induced porphyria attack that Mr. Rogers will experience.

12. In the past, the Florida lethal injection protocol has used midazolam as the first drug in a three-drug protocol. Midazolam is a drug classified as a benzodiazepine. Studies have shown that benzodiazepines can induce porphyria attacks. Midazolam significantly increased porphyrin accumulation, even when midazolam was injected in low concentrations. When Florida used midazolam for past executions, the amount of midazolam given was 100 to 200 times the amount that might be given in a clinical setting. The consequence of this massive quantity on porphyrin accumulation and the ensuing negative symptoms would be profound.

13. Pentobarbital and sodium thiopental (sodium pentothal) are drugs classified as barbiturates. Drugs in this class are well known to increase the activity of enzymes in porphyrin synthesis, potentially leading to a buildup of porphyrin precursors and triggering a porphyria attack. Due to the risk of inducing attacks, barbiturates are contraindicated in a medical setting in individuals with porphyria. In a medical setting, lower doses of barbiturates are used. Even in these lower dosage ranges, barbiturates are avoided in individuals with porphyria. In the setting of lethal injection, the dosage of barbiturates is much higher than in a clinical setting. In this circumstance, the impact on individuals with porphyria would be profound and torturous.

14. Based on my review of Mr. Rogers medical record, it is my opinion that a substantial risk exists that, during the execution, Mr. Rogers will suffer from extreme and excruciating abdominal pain, tachycardia, hypertension, nausea, vomiting, and seizures.

15. I hold the opinions in this affidavit to a reasonable degree of medical certainty. Should additional information become available later, I reserve the opportunity to update or add to the opinions stated in this affidavit.

Signed this 26th day of April, 2025

Joel B. Zivot, MD, FRCP(C), MA, JM

PERSIA WALLS
NOTARY PUBLIC
GWINNETT COUNTY, GEORGIA
MY COMMISSION EXPIRES MAY 19, 2028

Appendix E February 18, 2025 Lethal Injection Procedure for the Florida Department of Corrections

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

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EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.

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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Ricky D Dixon

RICKY D. DIXON
SECRETARY

2/18/2025

DATE

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