IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2025-1179

CURTIS WINDOM,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA
Lower Tribunal No. 1992-CF-1305

REPLY TO ANSWER BRIEF OF APPELLEE

DEATH WARRANT SIGNED
Execution Scheduled for August 28, 2025, @ 6:00

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PRELIMINARY STATEMENT ABOUT THE RECORD

References to the record on direct appeal are designated as follows:

> "V" followed by the volume number followed by "R" for the page number for the transcript of the guilt phase trial proceedings held on August 25-28, 1992 (mislabeled in the record on appeal as February 25-28, 1992), consisting of four volumes of 732 pages. Additionally, the bate stamp from the Clerk found at the bottom right-hand corner of the transcript will be referred to as "ROA" followed by the number. Example – the entire guilt phase trial transcript record is at (V4/TrR1-732/ROA283-1016).
>
> "R" followed by the page number for the 392 pages numbered consecutively consisting of Volume I – transcript of penalty phase proceedings held on September 23, 1992 (R1-113); Volume II – transcript of the sentencing proceedings held on November 10, 1992 (R114-134); Volumes III and IV - consisting of the pleadings filed in the case (R135-392); and the supplemental record on appeal (SupplR393-595) consisting of transcripts of both pre-trial and post-trial hearing and other pleadings.

References to the postconviction record in Case No. SC01-2706 are designated "V" for the ROA volume number, followed by "PC-R" for the bate stamp number. Where the bate stamp is difficult to see, the record may be additionally cited using the transcript number in the upper right-hand corner of the page as "PCTr" followed by the transcript page number.

References to the successive postconviction record filed for the Case No. SC16-1371 are designated "S-PCR" followed by the page number.

References to the successive postconviction record filed for the current appeal are designated "SPCR" followed by the page number.

INTRODUCTION

The Appellant, Curtis Windom, relies on the arguments presented in the Initial Brief of Appellant, filed on August 11, 2025, and offers the following Reply to the Answer Brief of Appellee filed on August 12, 2025. Any claims not argued herein are not to be taken as waived and Mr. Windom relies on the merits of his Initial Brief.

CLAIM ONE

APPLYING EVOLVING STANDARDS OF DECENCY, CURTIS WINDOM DID NOT RECEIVE HIS RIGHT TO COMPETENT COUNSEL IN VIOLATION OF HIS SIXTH AMENDMENT RIGHTS PURSUANT TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

The Appellee's Answer tracks the circuit court's order denying Mr. Windom's successive motion to vacate judgment and sentence [SPCR1292-1310], which tracks the State's Response to Defendant's Successive Motion for Postconviction Relief. [SPCR1234-1252] The

Answer raises the issue of timeliness, whether this claim should be procedurally barred and whether it has merit. Appellant's initial brief responded fully to each of these issues.

Once again, the State's Answer does not recognize that the judicial system has never taken responsibility for putting the citizens of Florida in the position of hiring a member of the Florida Bar that was not competent to handle such a complicated case. It is a serious omission that, at the time that trial counsel was retained, no standards existed beyond having a Florida Bar license. The Answer does not address the fact that this claim is interrelated with ineffective assistance of counsel *only to the extent* that this claim shows how counsel's lack of experience and training were evident in his failure to retain experts and present to the jury a compelling defense or any penalty phase mitigation whatsoever for this death penalty capital case. [V2/PCR314-15; PCR805]

If this Court finds that this claim is simply a re-packaging of former ineffective assistance of counsel claims, then the judicial system will have sidestepped its responsibility for the damage that an unqualified attorney can do to another person when they are allowed to practice in an area of law that carries life and death

consequences for their client. Under evolving standards of decency, the injustice done to Curtis Windom at the hands of an attorney that was not experienced enough to handle a death penalty capital case should finally be rectified. Mr. Windom put his life in the hands of a licensed attorney who was not capable of mounting a proper insanity defense and/or knowledgeable enough to present to the jury serious mental illness issues as statutory mitigation - and so the system must not take his life when it contributed to this travesty.

The Sixth Amendment – right to counsel is a fundamental right. It goes to the very core of a fair trial.

This Court found that *Gideon*[1] "remedied the basic constitutional injustice of prior felony trials without counsel." *See*, *Witt v. State*, 387 So. 2d 922, 927 (Fla. 1980).

Mr. Gideon was denied counsel in 1963 because, " Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense." *Gideon*, at 337. In 1963, even while Florida denied its citizens court-appointed counsel in most felony cases, it still

[1] *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

recognized that a capital offense was in a category of its own and the State should at least provide an attorney in such a dire circumstance.

The Supreme Court in *Gideon* had decided to revisit its decision, in *Betts v. Brady*, 316 U.S. 455 (1942), where it held that "a refusal to appoint counsel for an indigent defendant charged with a felony did not necessarily violate the Due Process Clause of the Fourteenth Amendment, which for reasons given the Court deemed to be the only applicable federal constitutional provision." *See, Gideon*, at 339. Again, even going further back to 1942, in *Betts v. Brady*, "Betts was advised that it was not the practice in that county to appoint counsel for indigent defendants except in murder and rape cases." *Gideon*, at 338. The point is, even in 1942, we understood how serious a capital trial is and states were appointing counsel at least for that offense.

There is important language this Court may reference in *Gideon* that speaks to the right to counsel being a fundamental right. The Supreme Court cited to a previous decision in *Powell v. Alabama*, 287 U.S. 45, 68 (1932) to emphasize how important it considered the right to counsel:

> "[The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty.. . . The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not `still be done.' " *Johnson* v. *Zerbst,* 304 U. S. 458, 462 (1938). To the same effect, see *Avery* v. *Alabama,* 308 U. S. 444 (1940), and *Smith* v. *O'Grady,* 312 U. S. 329 (1941).

Gideon, at 343. The Supreme Court in *Gideon* also reflected:

> That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." *Gideon*, at 344.

The Supreme Court went on to state:

> A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in *Powell* v. *Alabama:*
>
> > The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to

> the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." 287 U. S., at 68-69.
>
> The Court in *Betts* v. *Brady* departed from the sound wisdom upon which the Court's holding in *Powell* v. *Alabama* rested. Florida, supported by two other States, has asked that *Betts* v. *Brady* be left intact. Twenty-two States, as friends of the Court, argue that *Betts* was "an anachronism when handed down" and that it should now be overruled. We agree." [Gideon, 344-45]

The case law concerning the right to counsel evolved through *Gideon* to encompass all felonies, but standards that would make the appointment of counsel meaningful took longer to evolve. Nevertheless, if counsel is not qualified to present complicated mental health evidence and is unfamiliar with the crucial penalty phase of a capital trial where the prosecutor is seeking death, this is tantamount to no counsel at all – to defend against the most serious of criminal charges. Curtis Windom's case is evidence of that.

While the required qualifications of trial counsel in capital cases have evolved since the time of Mr. Windom's trial, the State responds

to the increased qualifications as though they are of minor consequence. To the contrary, these enhanced qualifications were painstakingly put in place by this Court and others throughout the United States to ensure that no one is given the death penalty unless they are represented by qualified counsel at trial. The State has all but conceded that Mr. Windom's trial counsel was not qualified under prevailing standards implemented since the time of the trial. Worse, the State argues that Mr. Windom *hired* the attorney so it's not the State's fault he was not qualified. [Answer, at 18] The qualifications apply to all attorneys, not just ones provided by the State. It is just this sort of circumstance that the evolving standards of decency doctrine was adopted to address.

Though the rules and standards have evolved, if Curtis Windom is denied relief, then their application has not kept pace. The standards would be nothing more than a proclamation without follow-through in their application. This Court should hold the justice system responsible for its part in having no special qualifications for capital counsel in 1992, even though Florida had found for decades that a capital offense was in a category of its own when it came to needing counsel. The evolving standards, if not

employed, remain theoretical. Constitutional rights and protections are not aspirational. This Court should apply evolving standards of decency to Curtis Windom's Sixth Amendment right to counsel and find that an incompetent attorney represented him because Florida had no standards in place to ensure a member of the Bar was an able advocate within the meaning of that constitutional protection.

The most telling aspect of the States Answer Brief is any credible argument that Mr. Windom's trial counsel was qualified to handle a capital case. This is due to the irrefutable evidence that trial counsel was not qualified. Instead, the State has expended considerable effort in arguing that it doesn't matter that Mr. Windom was represented by wholly unqualified trial counsel. That argument is beneath the dignity of this Court and makes a mockery of the essence of the Sixth Amendment right to counsel. The right of representation by competent counsel in a capital case is fundamental and cannot be corrected by the postconviction *Strickland* analysis.

It is not too late to avoid the spectacle of sending Mr. Windom to his execution when he was represented by trial counsel that even the State must concede was not qualified to do the job.

This court should vacate Mr. Windom's judgment and death sentence and grant him a trial with a properly trained capital attorney.

CLAIM TWO

THE CIRCUIT COURT'S SCHEDULING ORDER DENIES MR. WINDOM NOTICE AND OPPORTUNITY TO BE HEARD IN VIOLATION OF DUE PROCESS RIGHTS AFFORDED TO HIM BY THE FLORIDA AND U.S. CONSTITUTION.

The circuit court held that the victims' families' wishes that Curtis Windom not be executed, that his life be spared to live the rest of it out in prison, is inadmissible. We can distinguish our case from *Floyd v. State*, 569 So. 2d 1225, 1230 (Fla. 1990), which was cited by the State to support this point. The victim's families had more to say than asking that Curtis not be executed. It can be gleaned from their letters that they would also be able to provide admissible mitigation evidence such as how Curtis assisted people in his community and what he means to his loved ones. The letters also shed light on how the families see Curtis Windom. The letters display the compassion and human dignity that should be extended to Curtis Windom. The letters show a complete picture of how Curtis has positively impacted

each of their lives. The letters give this court a unique glimpse into the full depth of Curtis Windom.

However, the truncated briefing schedule made it impossible to develop the information further, despite the circuit court finding it was newly discovered. Curtis Windom's execution should be stayed so that his counsel has a meaningful opportunity to fully present mitigation that would likely change the outcome of his sentence.

People, even those convicted of murder, are not one-dimensional. Allowing the depth of mitigation to be presented only serves to ensure that the ultimate and irrevocable punishment of death is truly imposed upon those which society has deemed unredeemable. Curtis Windom is not unredeemable. He is a person who is loved and loves. He is a father, who has healed relationships that many would see as broken beyond repair. He is a grandfather who tries to offer grandfatherly advice, even when he is behind bars. He is someone who cared for people in his community, even when he had little to offer. He is someone who we see from the stories of people that knew him before the day of his crime, brought joy to people's lives. Curtis Windom is not irredeemable.

Aside from the fact that the families would like to present mitigation that would be admissible under FL Stat. §921.141, a question still lingers: Why should this Court not hear the victims' families' pleas for mercy on behalf of Curtis Windom? Why should their voices be less valuable? If the punishment of death is to serve vengeance, we should consider the question, "Whom does it serve when the victims' families impacted by Curtis Windom's acts seek mercy over vengeance?"

If human compassion and the recognition of rehabilitation are not persuasive viewpoints for sparing someone, whose case shows much more mitigation than aggravation, a look at the lack of utility of death as punishment may be more persuasive. We, as a society, know the death penalty has little, if any, deterrent effect.

Perhaps a monetary viewpoint should be considered. Our Legislature is well aware that the death penalty costs the citizens hundreds of thousands in tax dollars. Unfortunately, most people think it saves money to end a life rather than house an inmate for life. Most people do not realize the tremendous legal cost to execute someone within a legal system that at least contemplates a right to

appeal and postconviction review. Would Florida's citizens still support executions if they knew the truth?

It's not for the safety of the community that we execute people. The community is protected from dangerous criminals housed securely for life.

Perhaps looking at the revictimization to which the death penalty exposes victims' families offers a greater perspective on the issue. What if killing someone gives them no peace or comfort, as contemplated? What happens if they feel strongly that doing violence in the name of their loved one does not honor their loved one at all? Why would a system of justice insist on proceeding with the execution? Whom does it serve?

Mr. Windom respectfully requests that his convictions and death sentence be vacated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 13th day of August, 2025, the foregoing Reply Brief has been electronically filed with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: The Honorable Chief Judge of the Ninth Judicial Circuit Court of Florida, Lisa T. Munyon, lmunyon@ninthcircuit.org, LShorten@ninthcircuit.org; the Honorable Michael Kraynick, Circuit Judge, mkraynick@ninthcircuit.org; mberrios@ninthcircuit.org; C. Suzanne Bechard, Assistant Attorney General, carlasuzanne.bechard@myfloridalegal.com; capapp@myfloridalegal.com; Rick Buchwalter, Assistant Attorney

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WE HEREBY FURTHER CERTIFY that a copy has also been furnished via U.S. mail, this 11th day of August, 2025, to Curtis Windom, DOC # 368527, at Florida State Prison, P.O. Box 800, Raiford, Florida 32083.

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CERTIFICATE OF COMPLIANCE AND FONT

Counsel certifies that this Reply Brief is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rules of Appellate Procedure 9.100.

Counsel further certifies that this entire Brief contains 3255 words.