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IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

DERRICK MCLEAN
Petitioner,
v.

Michael Crews,
Secretary, Department of Corrections
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

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JURISDICTION TO ENTERTAIN PETITION AND GRANT HABEAS CORPUS RELIEF

This is an original action under Florida Rule of Appellate Procedure 9.l00(a). Fla. Const Art I, § 13 provides that, "The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety." This Court has original jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(3) and Fla. Const. Art V, §3(b)(1) and (9). This petition presents constitutional issues which directly concern the judgment of the Florida State courts and Mr. McLean's death sentence.

This Court has jurisdiction, see, e.g., *Smith v. State*, 400 So.2d 956, 960 (Fla. 1981), because the fundamental constitutional errors challenged herein arise in the context of a capital case in which this Court heard and denied Mr. McLean's direct appeal. *Baggett v. Wainwright*, 229 So.2d 239, 243 (Fla. 1969); *cf. Brown v. Wainwright*, 392 So.2d 1327 (Fla. 1981). This Court has plenary jurisdiction over death penalty cases. Art. V, § 3(b)(1), Fla. Const.; *Orange County v. Williams*, 702 So. 2d 1245 (Fla. 1997).

This Court has the inherent power to do justice. The ends of justice call on the Court to grant the relief sought in this case, as the Court has done in similar cases in the past. The petition pleads claims involving fundamental constitutional error. See *Dallas v. Wainwriqht*, 175 So.2d 785 (Fla. 1965); *Palmes v. Wainwright*, 460 So.2d 362 (Fla. 1984). This Court's exercise of its habeas corpus jurisdiction and of its authority to correct constitutional errors is warranted in this action.

STATEMENT OF THE CASE AND FACTS

Derrick McLean was sentenced to death for the November 2004 murder of Jahvon Thompson. After McLean rejected an offer to plead guilty in exchange for a life sentence, the case proceeded to a jury trial, where he was convicted as charged of first-degree felony murder, attempted home invasion robbery with a firearm, attempted first-degree murder, kidnapping with intent to commit a felony with a firearm, and attempted robbery with a firearm. The jury recommended that he be sentenced to death by a vote of 9-3. The court followed the recommendation and sentenced him to death. This Court affirmed the judgment and sentence on direct appeal. *State v. McLean*, 29 So.3d 1045 (2010). A timely petition for a writ of certiorari predicated on *Ring vs. Arizona*, 536 U.S. 584 (2002) was denied. *McLean v. Florida*,131 S.Ct. 153 (Oct. 04, 2010).

A timely Motion to Vacate Judgments of Conviction and Sentence was filed October 4, 2011 pursuant to Florida Rule of Criminal Procedure 3.851. After conducting an evidentiary hearing on some of the claims contained in the motion, the court entered an order denying all claims for relief on February 15, 2013. An appeal of that decision is pending in this Court. CASE NO. SC13-632.

GROUNDS FOR RELIEF

CLAIM 1

MR. MCLEAN RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR ABANDONING TRIAL COUNSEL'S EFFORTS TO OBTAIN INFORMATION ABOUT A TIPSTER WHO ACCUSED HIM OF THE CRIME AND THE ASSOCIATED "CRIMELINE" TAPE.

The claim asserted here was a component of Claim III raised below in McLean's motion for postconviction relief. The postconviction court addressed the claim this way:

> Mr. McLean asserts his state and constitutional rights were violated by the institutional destruction of relevant and potentially exculpating evidence; to wit, the Crimeline tape. He further asserts, as a sub claim, that counsel was ineffective for failing to assert the institutional destruction of said evidence as an independent ground for relief.

> To the extent Mr. McLean claims his state and constitutional rights were violated by the institutional destruction of the Crimeline tape, this is an issue that should have been raised at trial and, if properly preserved, on direct appeal. Therefore, this claim is procedurally barred from collateral attack in a motion for postconviction relief.

PC-R7, 1172.[1] The postconviction court further noted that both defense attorneys "stated that they were interested in the name of the tipster and had discussed obtaining the information. Ms. Cashman testified that it was her understanding that the tape would have been destroyed within 30 days of being made. However, counsel still filed a Motion to Compel production of the Crimeline tape and the identity of the tipster several months later as part of conducting full and complete discovery even though she reasonably believed the tape would have already been erased." PC-R7, 1172-74. Defense counsel had been appointed to represent the defendant the day after he was arrested, on December 18, 2004. R5, 524. A motion to compel disclosure of any information regarding compensated informants was first made until around March 10, 2005. R5, 622-24. The defense motion to compel disclosure of the Crimeline information specifically was not made until May 4, 2005, and the hearing on it took place a few weeks later, on May 27. This time the

[1] The ineffective assistance subclaim was raised in the postconviction proceedings and in the appeal of the lower court's denial of relief.

State objected to providing the name or names of whoever called in information. R1, 123-27.[2] After some discussions which appeared to confirm that procedures such as the use of a blind escrow account were used to assure the anonymity of the paid informer, the court denied the motion without prejudice. *Id.* However McLean's appellate counsel did not raise any claim relating to the tipster or the Crimeline tape.

Argument

Destruction of potentially exculpatory evidence, including impeaching, evidence, is an issue that arises frequently in postconviction proceedings. It often arises in the context of destroyed tissue samples such as might be obtained by examining physical evidence that might have trace amounts of blood, skin tissue, hair and so on, which could be analyzed for DNA. This situation is somewhat different because it concerns the recording of an anonymous tipster who likely was a family member and possibly an actual or potential witness, perhaps even a co-defendant or member of a co-defendant's family, and who received a significant amount of money for his or her information.

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[2]There may have been six callers altogether. R3, 409.

Bad faith destruction of material evidence is a denial of due process pursuant to *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988), and *Kelley v. State*, 569 So.2d 754 (Fla. 1990). In *Youngblood,* the Court set a minimum standard regarding the destruction of possible exculpatory evidence. "Unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Id.* at 58; see *Kelley v. State*, 569 So.2d 754 (Fla. 1990). Conversely, where bad faith has been shown, the loss or destruction of such evidence requires dismissal of the charges or depending on the level of prejudice, suppression of the state's secondary evidence.

Here, however, McLean argues that his rights were violated by the institutional, i.e. common practice, destruction of relevant and potentially exculpating evidence. A duty to preserve evidence is simply the logical extension of the Supreme Court's rulings in *Brady v. Maryland*, 373 U.S. 83 (1963) and other decisions "in what might loosely be called the area of constitutionally guaranteed access to evidence." *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982) at 867.

In *Brady, supra*, the Supreme Court held that the prosecution has a duty to disclose, upon request, all evidence favorable to the accused and material either to guilt or punishment. *See also Moore v. Illinois*, 408 U.S. 783, 794 (1972). The rule was later clarified in *United States v. Agurs*, 427 U.S. 97 (1972). There it was emphasized that the overriding concern of the *Brady* rule is the "justice of the finding of guilt." *Id.*, at 112. To the extent suppression of evidence results in denial of a fair trial, it violates due process. *Id.*, at 114.

In *United States v. Bryant*, 439 F.2d 642 (D.C. Cir. 1971), the court applied the reasoning of Brady in the context of lost evidence. The court found that the duty to disclose favorable evidence upon request was meaningless if it could be circumvented by the expedient of destroying the evidence before it was requested. It therefore held that "before a request for discovery has been made, the duty of disclosure is operative as a duty of preservation." *Bryant*, 439 F.2d at 651. *Bryant* simply says that such evidence may not be destroyed before the request occurs. Bryant, however, does not require that every loss of evidence be deemed a violation of due process. Relying on *United States v. Augenblick*, 393 U.S. 348 (1969), the court further held that loss or destruction of evidence does not violate due process concepts if the government shows that it has developed rigorous

procedures designed to preserve the evidence and has followed the procedures in good faith. 439 F.2d at 651-652. Here, the government developed procedures to destroy the evidence.

In the wake of *Bryant*, concerns were raised about the problem later addressed in *Agurs*, that is, how were investigating agencies to know which evidence to preserve? The pragmatic judicial response evidences concern that no insuperable burdens be placed on investigating agencies. In *Bryant* itself, the evidence was characterized as highly relevant as it was crucial to guilt or innocence. But in keeping with the idea that it is not the prosecutor's function to determine what evidence is necessary for an adequate defense, the court established a duty to preserve all evidence that "might be favorable." *Id.*, at 652, n. 21, and related text.

Bryant and progeny have simply been logical extensions of *Brady* and *Agurs*, necessary to effectuate the spirit of those cases and, more importantly, to obtain that which was their overriding concern: a fair trial through an uncorrupted fact-finding process.

The existence of the duty to preserve does not depend solely on the *Brady/Agurs/Bryant* line of cases. It also finds support in *United States v. Valenzuela-Bernal, supra*, and cases discussed therein. In *Valenzuela-Bernal*, the Supreme Court assessed the defendant's claim that he had been denied both due process and the right to compulsory process when the government deported two witnesses to his crime before the defense had the opportunity to interview them. *Valenzuela-Bernal* held that the government had no absolute duty to detain the witnesses; this holding was a recognition of the government's duty to enforce the immigration laws. *Id.*, at 864-66. Yet implicit in the decision is the notion that the government had the duty not to deport the witnesses if they could supply material evidence. Thus, sanctions were held appropriate if the defendant could show that the deportation deprived him of material, favorable evidence. *Id.*, at 873-74. The Supreme Court stated that if the defendant could have shown that the witnesses' testimony would have been favorable and material, he would have shown a due process violation that so infected the fairness of the trial as to make it "more a spectacle or trial by ordeal than a disciplined contest." *Id.*, at 872.13

In recognition of the fact that the defendant had no access to the witnesses, *Valenzuela-Bernal* found it proper to relax the degree of specificity required in showing materiality compared to that required in a *Brady* situation or in a situation where the defendant claims impairment of the ability to mount a defense due to post-indictment delay. *Id.*, at 869-70. See *Barker v. Wingo*, 407 U.S. 514 (1972).

Finding the deported witness situation more closely analogous to the undisclosed informer situation, the Supreme Court held that the same showing of materiality should be applied in order to obtain sanctions: the defendant must make some plausible showing that the deported witnesses' testimony would have been material and favorable. *Id.*, at 873-74. A showing of the events to which the witness might testify, and the relevance of those events to the crime charged, may demonstrate the required materiality. *Id.*, at 871. Reversal is required if there is a "reasonable likelihood that the testimony could have affected the trier of fact." *Id.*, at 873-74.

Valenzuela-Bernal and other "access to evidence" cases cited therein implicitly recognize the prosecutor's duty to retain material evidence for the use of the defense and require sanctions for violation of the duty. When the State routinely destroys evidence, in this case of a person claiming to have relevant knowledge of the identity of a murder suspect and who received a monetary reward

for informing on the defendant, the judiciary is excluded entirely and forever from any sort of oversight role, and the prosecution is freed from even any sense, let alone reality, of accountability. The postconviction scheme put in place by Rue 3.852 allows the State to keep information secret during the trial and direct appeal proceedings, but then disclose it after a death penalty conviction becomes final. Even then, a great deal of such disclosure is submitted under claims of exemption and disclosed only after the Court has conducted an ex parte in camera review of it. This level of protection is routine in a wide variety of legal circumstances, such as when a subpoena duces tecum is issued for material thought to be relevant to any sort of legal proceeding. The opposing party can file for a protective motion, but he cannot simply destroy it. While the information may not turn out to be helpful to the defense, the defendant should at least have the consolation of knowing that it has been reviewed by an independent authority who has concluded that it would not have made any difference.

For the foregoing reasons, Petitioner urges that habeas relief be granted.

CLAIM 2

FLORIDA'S DEATH PENALTY STATUTE, WHICH ALLOWS A NON-UNANIMOUS VERDICT, IS UNCONSTITUTIONAL UNDER THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND VIOLATES EVOLVING STANDARDS OF DECENCY WHICH

MARK THE PROGRESS OF A MATURING SOCIETY.

The Eighth Amendment to the United States Constitution prohibits the "unnecessary and wanton infliction of pain," *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (plurality opinion), and procedures that create an "unnecessary risk" that such pain will be inflicted. *Cooper v. Rimmer*, 379 F.3d 1029, 1033 (9th Cir.2004). The Eighth Amendment has been construed by this Court to require that punishment for crimes comport with "the evolving standards of decency that mark the progress of a maturing society." *Roper v. Simmons*, 543 U.S. 551, 561 (2005) (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion). "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Trop v. Dulles*, 356 U.S. 86, 100, 78 S.Ct. 590 (1958). In assessing the evolving standards of decency, the Court has considered the laws of the various states and the entire world. *Id.* at 102-03. This Court further stated, that, "The provisions of the Constitution are not time-worn adages or hollow shibboleths. They are vital, living principles that authorize and limit governmental powers in our Nation" *Id.* at 103.

The Eighth Amendment to the Federal Constitution requires additional procedural protections in capital cases. *Beck v. Alabama*, 447 U.S. 625, 637-38, 100 S.Ct. 2382 (1980). "Death is a different kind of punishment from any other which may be imposed in this country. From the point of view of the defendant, it

is different in both its severity and its finality . . . . From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Gardner v. Florida*, 430 U.S. 349, 357-58, 97 S.Ct. 1197 (1977). The Eighth Amendment further requires heightened reliability in a jury's sentencing verdict. *Caldwell v. Mississippi*, 477 U.S. 320, 330-34 (1985). A lack of juror unanimity raises an unacceptable risk that the death verdict will be unreliable within the requirements of the Eighth Amendment. Less than unanimous juries render less reliable verdicts, disregard minority points of view and feel less moral responsibility in their verdict.

The American system of justice, and the American jury system, is one of the best, if not the best, system in the world. However, Florida's jury system in capital cases has failed to keep pace with the evolving standards of decency that mark the progress of a maturing society as demonstrated by the other State and federal death penalty statutes nationwide. Florida's system does not comport with the Eighth Amendment's evolving standards of decency because juries are not required to issue a unanimous death sentence and the State still adheres to a widely criticized practice of allowing a judge to override a jury's life verdict. Florida's capital

punishment statute regarding juror unanimity is an outlier that has failed to keep pace with the rest of the nation and the world.

Pursuant to *Graham v. Florida*, the Eighth Amendment's Cruel and Unusual Punishment Clause analysis alleging failure to comport with the evolving standards of decency requires that a court make two determinations on a "sentencing practice at issue." 560 U.S. - , 130 S.Ct. 2011, 2022 (2010). Courts are first to take into account "objective indicia of society's standards, as expressed in legislative enactments and state practice." *Id. See also Atkins*, 536 U.S. at 312 ("[T]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.")(quoting *Penry v. Lynaugh*, 492 U.S. 302 (1989). Second, courts consider whether the punishment at bar comports with "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning and purpose." *Id.* When a challenge is brought to whether the Eighth Amendment mandates that a sentence "follow a certain [sentencing] process" legislative enactments are instructive though not "scrutinized" as closely as in other challenges. *Miller v. Alabama*, 132 S.Ct. 2455, 2471-72 (2012).

With respect to societal standards, thirty-one out of thirty-four death penalty states require unanimous death sentences and 32 do not allow judges to override the jury. Unanimous Sentencing in Capital Felonies,

http://floridacapitalresourcecenter.org/statutes-rules/proposed-legislation/2012/.

The Federal Death Penalty Statute also requires a 12 person jury who must render a unanimous verdict as to an aggravating factor and as to a sentence of death. 18 U.S.C. §3593. Only three states allow a death sentence to be imposed with a less than unanimous jury verdict: Alabama, Florida and Delaware. However, Alabama requires a minimum jury recommendation of 10 to 2, in favor of death, before a death sentence can be imposed. Delaware requires a unanimous vote on the finding of one aggravator before a sentence of death can be considered. The jury is required to write their votes on a verdict form specifying which aggravating factor was found unanimously.

The jury in Mr. McLean's case rendered a verdict of 9 to 3. ***If Mr. McLean had been tried in any other state in the entire country, or in federal court, Mr. McLean would have received a life sentence.*** Florida is the *only* state in the entire country that allows juries to recommend a death sentence by a simple majority. As of 2012, only half of the persons given the death sentence in Florida could have been sentenced to death in any other state.

Every other state in the nation has seen its death penalty rates decline. North Carolina did not sentence a single person to death last year, for the first time in 35 years.

http://www.thecharlottepost.com/index.php?src=news&srctype=detail&category=

News&refno=5418. Florida is currently the only state with an increasing number of death sentences. This fact alone demonstrates the outlier status created by Florida's death penalty statute and the arbitrary and capricious effect of a system that does not require juror unanimity. Florida has the fourth largest population in the country, United States Census Bureau Annual Population Estimates, http://www.census.gob/popest/data/state/totals/2012/index.html, yet, Florida has the second largest number of inmates on death row, 411. Death Penalty Information center ("DPIC"), http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year. Florida has one and a half times the population of Pennsylvania (a state that requires a unanimous verdict) but twice the number of death sentenced individuals.

Florida's percentage of annual death sentences last year was stunning. In 2012, seventy-eight individuals nationwide were sentenced to death, the second lowest number since the death penalty was reinstated in 1976. DPIC, http://www.deathpenaltyinfo.org/2012-sentencing#Inmates. Twenty of those sentences, or 35%, were from Florida, up from fourteen in 2011 and the same number in 2010. Shockingly, as noted above, only 20% of all inmates on Florida's Death Row since 2000 were given a death sentence by a unanimous jury verdict.

In light of Florida's death penalty scheme, and failure to require juror unanimity, Florida has the highest number of death row exonerations in the

country– twenty-three, or 16.5% of the nation's 139 wrongful capital convictions. DPIC, http://www.deathpenaltyinfo.org/florida-1. Taken together, these statistics demonstrate that an innocent person charged with first degree murder in Florida is substantially more likely to be sentenced to death in Florida than if the exact same person committed the exact same crime in any other death penalty state in the country.

In a different context regarding a *Ring/Apprendi* challenge, this recognized that Fla. Stat. 921.141 has placed the Florida death penalty system on the fringes of Constitutionality. *State v. Steele*, 921 So. 2d 538, 548-550 (Fla. 2005). The court urged the Legislature to act: "[I]n light of development in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations." *Id.* at 548. However, attempts at reform have repeatedly stalled in the legislature.

At the time of the Court's opinion in *State v. Steele*, Florida was the only state in the country to decide that aggravators exist and to recommend a sentence of death by a mere majority. *Id. at n. 3, 4, 5, 6, 7, 8 and 9* (collecting state statutes). As noted *supra*, the Federal Government also requires a unanimous sentencing verdict. 18 U.S.C. § 3593 (d)(2000). At the time of the *Steele* opinion, 38 states retained the death penalty. *Id.* at 548. Since then five states have abolished the

death penalty (New Jersey (2007), New Mexico (2009), Illinois (2011) and Connecticut (2012), Maryland (May 2, 2013). Oregon has a *de facto* moratorium.

As further evidence of the nation's evolving standards of decency, in 2007, New York's death penalty statute was overturned and the legislature elected not to reinstate the death penalty, leaving the state with no death penalty statute and no one on death row. In 2013 in Virginia, the Death Row population has dwindled to 8 from a peak of 57 in 1995. A major reason for the decline is that fewer death sentences are being handed down; only two new inmates have been received in nearly 5 years. Larry O'Dell, Virginia's Death Row Population Down to 8, Richmond-Times Dispatch: AP, http://www.timesdispatch.com/news/state-regional/government-politics/virginia-s-death-row-population-down-to/article_333bd65e-70a6-5502-b947-e6bc5abf777b.html. Thus, Florida is even more of an outlier now than in 2005. And, at the time of the *Steele* opinion, Florida's number of new death sentences was not outstripping the rest of the country, as it is now.

Many years ago, the Connecticut Supreme Court stated:

> We perceive a special need for jury unanimity in capital sentencing. Under ordinary circumstances, the requirement of unanimity induces a jury to deliberate thoroughly and helps to assure the reliability of the ultimate verdict. The "heightened reliability demanded by the Eighth Amendment in the determination whether the death penalty is appropriate; *Sumner v. Shulman*, 483 U.S. 66, 107 S.Ct. 2716, 2720, 97 L.Ed.2d 56 (1987); convinces us that jury unanimity is an especially important safeguard at a capital sentencing hearing. In its

> death penalty decisions since the mid-1970s, the United States Supreme Court has emphasized the importance of ensuring reliable and informed judgments. These cases stand for the general proposition that the "reliability" of death sentences depends on adhering to guided procedures that promote a reasoned judgment by the trier of fact. The requirement of a unanimous verdict can only assist the capital sentencing jury in reaching such a reasoned decision.

State v. Daniels, 207 Conn. 374, 542 A.2d 306, 315 (1988) (internal citations omitted). At the time it was issued, the Connecticut Court's holding seemed cutting edge and revolutionary. In 2013, it is simply further support for a consensus determination that Florida has failed to keep up with the evolving standards of decency.

In addressing Sixth Amendment challenges to jury systems, the Supreme Court, in *Ballew v. Georgia*, 435 U.S. 223, 98 S.Ct. 1029 (1978), held that a state criminal trial of only five persons violated the Sixth and Fourteenth Amendments. The Court found that based on empirical data, smaller juries are less likely to foster deliberation which leads to inaccurate fact-finding. *Id.* at 232. "When individual and group decision-making were compared, it was seen that groups performed better because prejudices of individuals were frequently counterbalanced, and objectivity resulted. Groups also exhibited increased motivation and self-criticism.

Because juries frequently face problems laden with value choices, the benefits are important and should be retained. In particular, the counterbalancing of various biases is critical to the accurate application of the common sense of the

community." *Id.* These same criticisms and concerns are now known to apply to non-unanimous jury decision making. The Court has also noted that, 'we have long been of the view that [t]he very object of the jury system is to secure unanimity by a comparison of views and by arguments among jurors themselves.' *Allen v. United States*, 164 U.S. 492, 501, 108 S.Ct. 546 . . . (1988)." *Jones v. United States*, 527 U.S. 373, 382, 119 S.Ct. 2090 (1999). In a capital sentencing, it is important that a jury "express the conscience of the community on the ultimate question of life or death." *Lowenfeld v. Phelps,* 484 U.S. 231, 238, 108 S.Ct. 546 (1988). The Court has also held that "unanimity in jury verdicts is required where the Sixth and Seventh Amendments apply. In criminal cases, this requirement of unanimity extends to all issues– character or degree of the crime, guilt and punishment — which are left to the jury. ... the jury's decision upon both guilt and whether punishment of death should be imposed must be unanimous." *Andres v. United States*, 333 U.S. 740, 749, 68 S.Ct. 880 (1948).

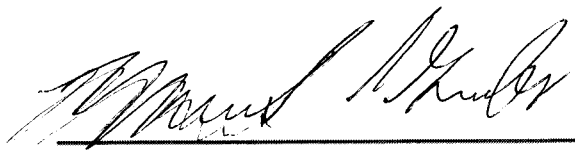
Florida's jury system in capital cases has failed to keep pace with the evolving standards of decency that mark the progress of a maturing society as demonstrated by the other State and federal death penalty statutes nationwide. Florida's system does not comport with the Eighth Amendment's evolving standards of decency because juries are not required to issue a unanimous death sentence.

CONCLUSION AND RELIEF SOUGHT

For all the reasons discussed herein, Mr. McLean respectfully urges this Honorable Court to grant habeas relief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Habeas Corpus has been electronically filed with the Clerk of the Court, and furnished by E-MAIL to Scott A. Brown, Assistant Attorney General at Scott.Browne@myfloridalegal.com; capapp@myfloridaleglal.com, and U.S. Mail to Derrick McLean, Union Correctional Institution, 7819 NW 228th Street, Raiford, FL 32026 on this 26th day of September, 2013.



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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Petition for Writ of Habeas Corpus was generated in Times New Roman 14-point font pursuant to Fla. R. App. P. 9.210.

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