IN THE SUPREME COURT OF FLORIDA

FREDDIE LEE HALL,

Petitioner,

vs. **Case No. SC00-1599**

MICHAEL W. MOORE,

Respondent.

________________________________/

REPLY TO RESPONDENTS RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner, Freddie Lee Hall, by and through the undesigned CCRC Counsel, hereby files this Reply to the Response to Petition for Writ of Habeas Corpus filed by the Respondent in the above styled case.

I. THE INSTANT HABEAS CORPUS PETITION SHOULD NOT BE DISMISSED AS UNTIMELY AND ABUSIVE

This Court has previously denied Respondents' Motion to Dismiss the Petition for Habeas Corpus due to alleged untimeliness. Respondents' response moves the Court to "reconsider" the previous denial.

Respondents' request to reconsider the previously denied argument is without legal justification. The rules of procedure do not allow parties to relitigate previously denied arguments by merely reasserting them in a responsive pleading. In denying the Motion to Dismiss the Court correctly relied on the case of Robinson v. Moore, _____ So 2d _______ 25 Fla. L. Weekly 5647 (Fla. 2000). Petitioner will rely upon the previous response to the motion to dismiss on the timeliness issue. (Copy of response attached as Exhibit 1). Petitioner would point out to the Court that the Robinson Habeas Petition was also filed several years after his conviction and

sentence became final.

II RESPONDENTS' RESPONSE IS INCORRECT IN ASSERTING THAT CLAIM ONE OF PETITIONER'S HABEAS PETITION IS IMPROPER FOR RAISING A PREVIOUSLY DENIED CLAIM.

Claim one of Petitioners Habeas petition alleges that appellate counsel committed fundamental error for failing to raise in the direct appeal that Freddie Lee Hall is mentally retarded and his execution would be a violation of the United States and Florida Constitutions. Contrary to respondents' assertion, inclusion of that claim would not have been a improper "re- litigation". The claim that petitioner asserts that appellate counsel should have raised in the direct appeal is based upon the specific language of Penry v. Lynaugh, 109 S. Ct. 2934 (1989) where the Court Stated:

> The public sentiment expressed in these and other polls and resolutions may ultimately find expression in legislation, which is an objective indicator of contemporary values upon which we can rely. But at present there is insufficient evidence of a national concensus against executing mentally retarded people convicted of a capital offense for us to conclude that it is categorically prohibited by the Eighth Amendment. Id. at 2955.

The plain meaning of the above excerpt from the Court's opinion is that it is permissible for litigants to allege that execution of mentally retarded individuals is unconstitutional under the the theory of evolving standards of human decency. Since more than five years had passed between the time of Penry and the filing of the direct appeal by appellate counsel it would have been entirely proper to have raised it in the direct appeal. It should be noted that two Justices in Hall v. State, 614 So. 2d 473 (Fla. 1993) issued a dissenting opinion that execution of a mentally retarded individual, such as Mr. Hall, would violate the Florida Constitution under evolving standards of human decency. This dissenting opinion was issued despite the fact that appellate counsel failed to raise the issue in the direct appeal. Surely it cannot be correct that the dissenting justices issued an opinion on subject matter that would have been a mere re-litigation of a

previously rejected claim. It is the contention of the Petitioner that had counsel properly raised this claim with brief and oral argument to the full court, including the information pointing toward an evolving standard of decency against the execution of a retarded person, then a majority opinion would have found that execution of a retarded person such as Freddie Hall is a violation of the United States and Florida Constitutions.

Furthermore, although it is true that some of the statutory evidence of the evolving standard of decency was enacted subsequent to the direct appeal process in Mr. Halls' case, there was still ample evidence for appellate counsel to have raised the issue in the direct appeal. The purpose of citing the additional statutory enactments banning the execution of retarded person is not to establish that they should have been included in the direct appeal, but rather to show that the consensus of the people of the United States against execution of retarded persons has grown even more resolute since that time.

III. PETITIONER'S HABEAS PETITION, CONTRARY TO THE ASSERTIONS OF RESPONDENT, CORRECTLY ASSERTS THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE FINDING THAT HALL WAS THE LEADER OF ACTS COMMITTED BY HALL AND CO-DEFENDANT RUFFIN.

The finding of fact by the trial court and this Court that Freddie Lee Hall was the "leader" of the criminal activities of Mr. Hall and co- defendant Ruffin was essential to the ultimate death sentence imposed. That is due to the fact that co-defendant Ruffin received a life sentence.

Therefore, it was encumbent upon appellate counsel to provide any and all information which would enlighten the Court as to the true relationship between Mr. Hall and Mr. Ruffin. As stated in the Petition, the testimony of Detective Bishop directly refutes the trial court and this Courts finding of the leadership of Mr. Hall. Respondent is correct in pointing out that Detective Bishop's deposition does not appear in the appellate record. However, the deposition was filed in the official court file in the case. [Exhibit 2 copy of cover sheet attached]. Furthermore, the

deposition of Detective Bishop is referred to in the appellate record. Dr. Kathleen Heide refers specifically to the 1990 deposition of Detective Bishop. [R1863]. She stated:

> But what I've found very interesting is that detective Bishop who interviewed both of them, in a deposition in 1990, unsolicited, gave his impression's of the two men and that document I thought was very interesting because he said basically that he didn't think that Freddie had the smarts he called him dimwitted, to make things up and he thought that the master-mind and again this is the man that interviewed both of them and was the detective on ......[R1863]

The clear meaning of Dr. Heidi's above statements is that there existed a deposition of detective Bishop taken in 1990 where he stated his opinion that Freddie Lee Hall was dimwitted and that Mr. Ruffin was the mastermind. Since the "leadership" finding of the Court was so essential to the proportionality analysis, appellate counsel had the responsibility to supplement the record with this critical deposition of Detective Bishop. This testimony is particularly important in light of the uncontroverted evidence that Ruffin shot Hurst and that Ruffin shot Deputy Coburn. The Detectives statement also directly rebuts the states argument that Ruffins' statement that Hall told him "if he wanted to run with him he had to prove himself to be a man" meant that Hall was the leader. The unbiased and experienced observations by Detective Bishop outlined in the Petition establishes that Ruffin, not Hall, was the leader. At the very least the testimony establishes equal culpability of the two men rendering the death sentence of Mr. Hall unconstitutional and disproportionate.

IV RESPONDENT RESPONSE IS INCORRECT IN STATING THAT THE PETITIONERS ALLEGATIONS CONCERNING USE OF THE 1968 RAPE CONVICTION ARE INVALID

The response states that appellate counsel was not deficient in failing to challenge the prior violent felony conviction aggravator since there had been no determination made by a court of competent jurisdiction that the prior conviction was invalid. However, it is petitioners

contention that this Court has competent jurisdiction to make a finding that the 1968 conviction was invalid. The court should not turn a blind eye to the extreme prejudice associated with the racial remarks made to the jury in the 1968 case. Where such fundamental due process rights are readily apparent and uncontroverted in the record, then this Court has jurisdiction to find that the 1968 conviction is invalid in terms of its use as a aggravator. Furthermore, Respondents' assertions are incorrect that the 1968 prior violent felony aggravator is non-prejudicial because there existed other prior violent felony convictions against Hall concerning the 1978 shooting of Deputy Coburn. As stated in the petition, in conducting a proportionality analysis as between the life sentence given Ruffin and death sentence given Hall, the Court justified the death sentence in part due to the violent criminal history of Hall. [See Hall v. State 614 So 2d at 478 (Fla 1983)]. Since both Hall and Ruffin were convicted of felonies surrounding the shooting of Deputy Coburn those prior felonies could not be a basis of distinction between the two under a proportionality analysis. Therefore, the use of the racially charged and unconstitutional 1968 attempted rape conviction was prejudicial to Mr. Hall.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing **REPLY TO RESPONDENTS RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS** was furnished to all counsel of record by U.S. mail postage prepaid this ____th day of December 2000.

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