

IN THE SUPREME COURT OF FLORIDA

RANDALL SCOTT JONES,

Petitioner,

v.

Case No. SC01-2424

MICHAEL W. MOORE,

Respondent.

_____ /

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Respondent, MICHAEL W. MOORE, by and through the undersigned Assistant Attorney General, and hereby responds to the Petition for Writ of Habeas Corpus filed in the above-styled case. Respondent respectfully submits that the petition should be denied, and states as grounds therefor:

FACTS AND PROCEDURAL HISTORY

The facts of this case are recited in this Court's initial opinion, Jones v. State, 569 So. 2d 1234 (Fla. 1990):

During the evening of July 26, 1987, Jones and his codefendant, Chris Reesh, went target shooting with a 30-

30-caliber rifle near Rodman Dam in Putnam County. Jones's car became stuck in the sand pits. At about midnight, they flagged down a fisherman who was leaving the area and asked if he could pull them out. The fisherman indicated that he could not but told them to seek help from the driver of a Chevrolet pickup truck parked in the parking lot. Inside the cab of the pickup Matthew Paul Brock and Kelly Lynn Perry were sleeping.

Between 12:30 and 1:30 a.m., a twelve-year-old boy who was camping at the Rodman Dam Campground awoke to the sound of three gunshots fired in rapid succession. Later that morning, a Rodman Dam concession worker noticed cigarette packets, broken glass, and blood in the parking lot. She followed a trail of blood and drag marks across the parking lot for about 160 yards to a wooded area where she discovered Brock's body lying in the underbrush. She called the Putnam County Sheriff's Office. During the search of the area, deputies discovered Perry's partially clothed body about twenty-five feet deeper into the underbrush.

At trial, Dr. Bonofacia Flora, a forensic pathologist, testified that Brock died instantly from two wounds to the head from a high-powered rifle. Perry died from a single shot to the forehead, also caused by a high-powered rifle.

Matthew Brock's brother and sister-in-law testified to having seen the victim's pickup, while in Jones's possession, parked at a convenience store in Green Cove Springs at approximately 7 a.m. on July 27. They observed bullet holes in the windshield and a 30-30-caliber rifle inside. Richard Brock confronted Jones, who was a stranger to him, and asked him where he got the truck. Jones told him he had just purchased the truck for \$4,000 and drove away.

On August 16, Jones was arrested in Kosciusko,

Mississippi, by the Mississippi Highway Patrol for possession of a stolen motor vehicle. The next day, Detective David Stout and Lieutenant Chris Hord of the Putnam County Sheriff's Office interviewed Jones in Mississippi. Lieutenant Hord testified that after advising Jones of his *Miranda* rights, Jones gave a statement implicating himself at the scene but blaming Reesh for having shot both victims. Jones admitted driving the pickup to Mississippi, where he planned to get rid of it. In addition to signing a waiver-of-rights form, Jones also signed a consent to search the trailer in which he had been living at the Lighthouse Children's Home in Mississippi. In the trailer, Detective Stout recovered pay stubs from Perry's employer in Palatka bearing her fingerprint. A calendar bearing Perry's name was also recovered from the bottom of a nearby dumpster.

On August 20, Jones was transported from Mississippi to Florida. Lieutenant Hord testified that at the outset of the trip, he reminded Jones that his *Miranda* rights were still in effect. Jones then volunteered a second statement which was reduced to writing and signed after their arrival at the Putnam County jail. In this statement, Jones admitted that his earlier statement was true, except that he had reversed his and Reesh's roles in the murder.

The state's case was completed with the testimony of Rhonda Morrell, who was Jones's ex-fiancee. She testified that Jones had told her that he had taken her father's rifle for target shooting and that "he had shot those two people. He didn't remember doing it, but he had done it." She also testified that Jones had told her that he had pawned the rifle, and she identified Jones's signature on a pawn ticket dated August 19, 1987. The rifle was retrieved from a Jacksonville gun and pawn shop.

569 So. 2d at 1235-36 (footnote omitted). Jones was charged with two counts of first

degree murder, sexual battery, armed robbery, aggravated burglary, and shooting into an occupied vehicle (DA-R. 5-6, 642-43, 1650-51).¹ He was tried before the Hon. Robert R. Perry, Circuit Judge, and convicted on all counts based on evidence establishing the facts outlined above.

Following the penalty phase, the jury recommended sentences of death for both murders by a vote of eleven to one and Judge Perry followed the recommendation, finding two aggravating circumstances applied to each murder: cold, calculated, and premeditated, and pecuniary gain; no mitigating circumstances were found (DA-R. 685-692). On appeal, Jones was represented by Assistant Public Defender Larry B. Henderson, and alleged the following errors:

ISSUE I

THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS STATEMENTS OBTAINED FROM THE DEFENDANT FOLLOWING A REQUEST FOR COUNSEL THAT WAS NOT GRANTED.

ISSUE II

¹The designation "DA-R." will be used to refer to the record in the direct appeal of Jones's convictions and sentences, Florida Supreme Court #72,461; "RS-R." will be used to refer to the record in the appeal from Jones's resentencing, Florida Supreme Court #78,160; and "PC-R." will be used to refer to the record in the pending postconviction appeal, Florida Supreme Court #SC00-1492.

THE CONVICTION FOR SEXUAL BATTERY MUST BE REVERSED BECAUSE THE ACTS ALLEGEDLY CONSTITUTING SEXUAL BATTERY OCCURRED WELL AFTER THE DEATH OF THE VICTIM.

ISSUE III

DEATH PENALTIES WERE IMPOSED IN VIOLATION OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS BECAUSE THE JURY DID NOT DETERMINE THE EXISTENCE OF STATUTORY AGGRAVATING CIRCUMSTANCES THAT DEFINE WHICH FIRST-DEGREE MURDERS ARE PUNISHABLE BY DEATH.

ISSUE IV

THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON THE AGGRAVATING CIRCUMSTANCE OF AN ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL MURDER AND IN PREVENTING DEFENSE COUNSEL FROM ARGUING TO THE JURY THE INAPPLICABILITY OF THAT CIRCUMSTANCE AS A MATTER OF LAW.

ISSUE V

THE TRIAL COURT ERRED IN FINDING THAT THE MURDERS WERE COMMITTED FOR PECUNIARY GAIN.

ISSUE VI

THE TRIAL COURT ERRED IN FINDING THAT THE MURDERS WERE COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION WHERE THE FINDING IS UNSUPPORTED BY THE EVIDENCE.

ISSUE VII

THE TRIAL COURT VIOLATED THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS BY RESTRICTING DEFENSE COUNSEL'S ARGUMENT TO THE JURY CONCERNING THE CONSEQUENCES AND APPROPRIATENESS OF SENTENCES OF LIFE IMPRISONMENT.

ISSUE VIII

THE FLORIDA DEATH PENALTY VIOLATES THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS BECAUSE THE AGGRAVATING AND MITIGATING CIRCUMSTANCES DO NOT GENUINELY LIMIT THE CLASS OF PERSONS ELIGIBLE FOR THE DEATH PENALTY; THE FACTORS ARE PRONE TO ARBITRARY AND CAPRICIOUS APPLICATION.

ISSUE IX

THE TRIAL COURT ERRED IN ALLOWING, OVER OBJECTION, FAMILY MEMBERS TO IDENTIFY THE MURDER VICTIMS.

ISSUE X

THE TRIAL COURT ERRED IN DENYING DEFENSE COUNSEL'S MOTION TO WITHDRAW MADE WHEN IT WAS REVEALED THAT A STATE WITNESS TESTIFYING AGAINST THE DEFENDANT WAS BEING REPRESENTED BY DEFENSE COUNSEL'S LAW FIRM ON PENDING CRIMINAL CHARGES.

ISSUE XI

THE TRIAL COURT ERRED IN CONDUCTING AN INQUIRY OF A JUROR OUTSIDE THE PRESENCE OF THE DEFENDANT AND IN HAVING THE PEREMPTORY CHALLENGES EXERCISED OUTSIDE THE PRESENCE OF THE DEFENDANT.

ISSUE XII

THE TRIAL COURT ERRED IN ALLOWING THE STATE TO USE TESTIMONY CONCERNING DNA IDENTIFICATION WHERE THE PREDICATE FOR THE USE OF SUCH SCIENTIFIC EVIDENCE WAS INADEQUATE.

ISSUE XIII

THE TRIAL COURT ERRED IN ALLOWING THE STATE TO PRESENT AND THE JURY TO CONSIDER OVER OBJECTION TESTIMONY AND ARGUMENT CONCERNING JONES' "LACK OF REMORSE" IN COMMITTING THE CRIMES.

ISSUE XIV

THE TRIAL COURT ERRED IN FAILING TO COMPLY WITH SECTION 921.141, FLA. STAT. (1987) WHEN ADJUDICATING JONES GUILTY OF FIRST-DEGREE MURDER.

ISSUE XV

CONVICTIONS FOR MURDER, BURGLARY OF A CONVEYANCE WITH AN ASSAULT, ARMED ROBBERY, AND SHOOTING OR THROWING A DEADLY MISSILE INTO AN OCCUPIED VEHICLE ARE DUPLICITOUS AND OTHERWISE VIOLATE THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT AND ARTICLE I, SECTION 9 FLORIDA CONSTITUTION.

This Court reversed the conviction for sexual battery but affirmed the two murder and other noncapital convictions. Jones, 569 So. 2d at 1241. The Court also vacated the death sentences due to several errors affecting the penalty phase, and remanded for a new sentencing proceeding before a jury.

The resentencing proceeding was held in March, 1991. At the close of the proceedings, the jury recommended death sentences for both murders by a vote of ten to two (RS. V2/226-227). The trial court subsequently imposed two death sentences, finding in aggravation 1) prior violent felony convictions (based on the contemporaneous offenses) and 2) committed in a cold, calculated, and premeditated

manner without any pretense of moral or legal justification (RS. V2/253-255, 261-263). As to Brock's murder, the court also found that it was committed during an armed robbery and for pecuniary gain as a single aggravator (RS. V2/253-254). As to Perry's murder, the court found that it was committed during a burglary of a conveyance (RS. V2/261-262). The court found that no statutory mitigators had been established, but considered nonstatutory mitigating evidence as to Jones' childhood, his suffering a disorder that impairs his coping skills, and his capacity for rehabilitation (RS. V2/255-258, 263-266). However, the court concluded that this evidence presented little mitigation value, and determined that the aggravating factors clearly outweighed any statutory or nonstatutory mitigating factors (RS. V2/258, 266).

On appeal from the remand, Gilbert A. Schaffnit of the Law Offices of Gilbert A. Schaffnit, Gainesville, argued the following issues:

ISSUE I

THE TRIAL COURT DEPRIVED APPELLANT OF DUE PROCESS OF LAW BY FAILING TO CONDUCT A FULL EVIDENTIARY HEARING, UPON PROPER NOTICE, INTO APPELLANT'S ALLEGATIONS OF TRIAL COUNSEL'S CONFLICT OF INTEREST AND INEFFECTIVENESS AND MAKE REQUIRED INQUIRY.

ISSUE II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S SECOND MOTION TO SUPPRESS STATEMENTS AND DEPRIVED APPELLANT OF AN OPPORTUNITY TO ESTABLISH A PROPER FACTUAL BASIS FOR HIS DENIAL OF COUNSEL CLAIM.

ISSUE III

THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR SPECIAL VERDICT FORM, HIS CHALLENGE TO THE CONSTITUTIONALITY OF THE DEATH PENALTY STATUTE, AS WELL AS OTHER PREHEARING MOTIONS.

ISSUE IV

THE TRIAL COURT COMMITTED FUNDAMENTAL ERROR BY IMPROPERLY COMMENTING UPON THE TESTIMONY OF A CRITICAL STATE WITNESS AND OTHERWISE BOLSTERING THE WITNESS IN THE EYES OF THE JURY.

ISSUE V

THE TRIAL COURT ERRED IN INSTRUCTING THE JURY THAT IT COULD CONSIDER EITHER MURDER TO HAVE BEEN COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER, AND FURTHER ERRED IN IMPOSING ITS SENTENCES OF DEATH IN PART THEREON.

ISSUE VI

THE TRIAL COURT ERRED IN INSTRUCTING THE JURY THAT IT COULD CONSIDER AS AN AGGRAVATING CIRCUMSTANCE AS TO THE MURDER OF ONE VICTIM THE FACT THAT THE OFFENSE WAS COMMITTED FOR PECUNIARY GAIN, AND FURTHER ERRED IN IMPOSING ITS SENTENCE OF DEATH IN PART THEREON.

ISSUE VII

THE TRIAL COURT ERRED BY INSTRUCTING THE JURY AS TO MULTIPLE AGGRAVATING CIRCUMSTANCES INVOLVING THE SAME ASPECT OF CONDUCT, AND FURTHER ERRED IN IMPOSING SENTENCES OF DEATH BASED UPON IMPROPER DOUBLING OF AGGRAVATING CIRCUMSTANCES.

ISSUE VIII

THE TRIAL COURT ERRED BY PERMITTING THE STATE OF FLORIDA TO PRESENT TESTIMONY AND EVIDENCE IN SUPPORT OF AN AGGRAVATING CIRCUMSTANCE THAT WAS FOUND BY THIS COURT TO HAVE BEEN INAPPLICABLE AS A MATTER OF LAW.

ISSUE IX

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR MISTRIAL DUE TO PROSECUTORIAL MISCONDUCT DURING FINAL ARGUMENT.

ISSUE X

THE TRIAL COURT ERRED IN PERMITTING THE STATE OF FLORIDA, OVER OBJECTION OF COUNSEL, TO EXAMINE APPELLANT'S MITIGATION WITNESS AS TO ASPECTS OF UNCHARGED CRIMINALITY ALLEGEDLY COMMITTED DURING APPELLANT'S PRE-TEEN YEARS.

ISSUE XI

THE TRIAL COURT ERRED IN REFUSING TO INSTRUCT THE JURY TO CONSIDER THE STATUTORY "SUBSTANTIALLY IMPAIRED CAPACITY" MITIGATING CIRCUMSTANCE, AND FURTHER ERRED IN NOT CONSIDERING THIS STATUTORY MITIGATING CIRCUMSTANCE IN ITS OWN JUDGMENT AND SENTENCE AND WEIGHING SAME AGAINST ANY AGGRAVATING CIRCUMSTANCE.

ISSUE XII

THE TRIAL COURT ERRED IN REFUSING TO INSTRUCT THE JURY TO CONSIDER THE EXISTENCE OF MULTIPLE NON-STATUTORY MITIGATING CIRCUMSTANCES WHICH WERE ESTABLISHED THROUGH THE UNREFUTED TESTIMONY OF APPELLANT'S EXPERT WITNESS.

This Court affirmed the sentences. Jones v. State, 612 So. 2d 1370 (Fla. 1992).

Jones sought certiorari review of that opinion in the United States Supreme Court,

alleging that the trial court's failure to hold an evidentiary hearing into allegations of defense counsel's conflict of interest deprived Jones of due process and effective assistance of counsel. The Supreme Court denied his petition. Jones v. Florida, 510 U.S. 836 (1993).

Jones filed a motion for postconviction relief which was denied by the trial court following an evidentiary hearing. The appeal from the denial of relief is pending before this Court in Case No. SC00-1492. Jones then filed the instant petition for writ of habeas corpus on or about October 31, 2001. This response is offered pursuant to this Court's Order of November 9, 2001.

ARGUMENT IN OPPOSITION TO CLAIMS FOR RELIEF

Jones's habeas petition presents three issues, each of which will be addressed in turn. As will be seen, none of his claims warrant the granting of habeas relief, and therefore his petition for writ of habeas corpus should be denied.

Claim I: Whether appellate counsel was ineffective for failing to raise on direct appeal that trial counsel had unconstitutionally conceded Jones' guilt during closing argument.

Jones's first issue presents an allegation that his appellate counsel was ineffective on direct appeal for failing to challenge his trial counsel's performance in

his closing argument to the jury, where counsel conceded that Jones had killed the victims. His claim requires an evaluation of whether counsel's failure to raise this issue was so deficient that it fell outside the range of professionally acceptable performance and, if so, whether the deficiency was so egregious that it undermined confidence in the correctness of the result. Thompson v. State, 759 So. 2d 650, 660 (Fla. 2000); Groover v. Singletary, 656 So. 2d 424, 425 (Fla. 1995); Byrd v. Singletary, 655 So. 2d 67, 68-69 (Fla. 1995), cert. denied, 516 U.S. 1175 (1996). A review of the record demonstrates that neither deficiency nor prejudice has been shown in this case. To the contrary, the record reflects that appellate counsel acted as a capable advocate, asserting fifteen issues for judicial review in a 100-page brief. Clearly, Jones's current claim would not have been successful even if presented in Jones's direct appeal, and therefore counsel was not ineffective for failing to present this issue. Groover, 656 So. 2d at 425; Chandler v. Dugger, 634 So. 2d 1066, 1068 (Fla. 1994) (failure to raise nonmeritorious issues is not ineffective assistance of appellate counsel).

Initially, it is obvious that although Jones asserts that his allegation of a right to counsel violation could have been presented in his direct appeal, this type of claim is ordinarily reserved for a postconviction challenge, given this Court's reluctance to address the question of sufficiency of counsel within the confines of a direct appeal record. Case law is clear that such claims can only be considered on direct appeal

when the alleged ineffectiveness is apparent on the face of the record. See, Martinez v. State, 761 So. 2d 1074, 1089, n. 2 (Fla. 2000); Blanco v. Wainwright, 507 So. 2d 1377, 1384 (Fla. 1987). The claim which he now asserts, that counsel's strategy was ineffective, at best involves a determination as to whether Jones agreed to his attorney's strategy of admitting some elements of the offense in adopting a defense of guilty to a lesser charge. This necessarily requires the development of facts at an evidentiary hearing, and therefore would not present an instance of ineffectiveness which could be apparent on the face of the record. See, Nixon v. State, 572 So. 2d 1336, 1340 (Fla. 1990) (remanding for an evidentiary hearing on same claim and then declining to address issue, identifying issue as one more appropriate for postconviction), cert. denied, 502 U.S. 854 (1991). Thus, it could not have been presented on direct appeal.

Respondent's position that this issue could not have been brought on direct appeal is supported by the fact that Jones has presented the same allegation of ineffective assistance of counsel in his postconviction motion. His claim was summarily denied and an issue related to that ruling is pending before this Court in his postconviction appeal. As submitted in that appeal, this issue is also without merit for the reasons that follow.

Jones relies on Nixon v. Singletary, 758 So. 2d 618 (Fla.), cert. denied, 531 U.S.

980 (2000), to assert that his attorney's strategy of conceding guilt as to some of the elements of the murder charge established that his constitutional right to counsel was violated. As Jones explains, counsel's concession of Jones's identity as the killer in this case occurred during his closing argument to the jury. This is an important distinction from Nixon, where counsel conceded guilt in opening statement, prior to having subjected the State's case to adversarial testing. Recently, this Court recognized that a concession of guilt in closing argument is an acceptable strategy that does not require a defendant's consent. In Atwater v. State, 26 Fla. L. Weekly S395 (Fla. June 7, 2001), this Court addressed and rejected all of the arguments currently advanced by Jones. Atwater expressly rejected the argument presented herein that the concession of guilt as to some elements of this offense, on these facts, amounted to a lack of counsel. In the instant case as well, overwhelming evidence established Jones' identity as the killer, and the concession of identity did not occur until counsel had forcefully subjected the State's case to an adversarial testing. Therefore, counsel's adoption of this reasonable strategy did not provide a basis for a finding of ineffectiveness or compel an evidentiary hearing on this claim, even when it was properly presented in postconviction.

For all of these reasons, Jones's claim that his appellate counsel was ineffective for failing to challenge the competency of trial counsel in the direct appeal in this case

must be denied.

Claim II: Competency to be Executed

Jones also asserts that he may be incompetent to be executed. Although he acknowledges that this claim is not currently ripe for judicial review, since no execution is pending, he suggests that he is including this claim in his current habeas petition in order to preserve the issue for federal court review. This Court has repeatedly found this issue to be without merit when raised prematurely in a habeas petition. Mann v. Moore, 26 Fla. L. Weekly S490, S491 (Fla. July 12, 2001); Hall v. Moore, 792 So. 2d 447, 450 (Fla. 2001). Jones has offered no basis for a different result; in fact, he fails to even acknowledge these recent precedents rejecting his claim. Clearly, Jones's claim of a possible future incompetence to be executed must be denied.²

Claim III: Whether the Florida death penalty statute is unconstitutional as applied.

Jones's final claim alleges that Florida's death penalty statute is unconstitutional under the reasoning of Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). Jones's

²Of course, no claim of incompetency was presented during his recent postconviction proceedings, and his trial and resentencing expert testified that Jones had average to above average intelligence and was not insane or incompetent (RS-R. V5/820-22, 849-53).

entire argument is based on Apprendi, including allegations that Apprendi overruled Walton v. Arizona, 497 U.S. 639 (1990), and that due process requires jury unanimity on a recommended sentence. However, his claims have already been rejected by this Court. Mann, 26 Fla. L. Weekly at S490; Mills v. Moore, 786 So. 2d 532 (Fla.), cert. denied, 121 S. Ct. 1752 (2001).

In addition, the Apprendi decision itself fails to support Jones's claim. In Apprendi, the United States Supreme Court held that due process and the right to a jury trial require that any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. Apprendi was sentenced under a statutory enhancement provision based on the trial court's finding of a hate crime based on a preponderance of the evidence standard. The Apprendi Court held that due process required that the jury rather than a judge make the determination of biased purpose, and that the State must prove biased purpose beyond a reasonable doubt rather than by a preponderance of the evidence.

However, the majority specifically rejected any argument that its holding affected the Court's prior precedent upholding capital sentencing schemes that require the judge to determine aggravating factors rather than the jury prior to imposing the death penalty. Apprendi, 120 S. Ct. at 2366, *citing*, Walton v. Arizona, 497 U.S. 639 (1990). In Walton, the United States Supreme Court held that Arizona's death penalty

scheme did not violate the Sixth Amendment right to a jury trial. Walton asserted that all the factual findings necessary for a death sentence must be made by a jury, not by a judge. Walton claimed that a jury must decide aggravating and mitigating circumstances. The Walton Court rejected this claim, noting that any argument that the Constitution requires that a jury impose the sentence of death or make the findings prerequisite to imposition of such a sentence has been soundly rejected by prior decisions of this Court. The Walton Court noted that constitutional challenges to Florida's death sentencing scheme, which also provides for sentencing by the judge, not the jury, have been repeatedly rejected.

Apprendi is simply inapposite to issues such as whether aggravating factors must be charged in an indictment or whether a jury recommendation should be unanimous. Apprendi requires that a fact that is used to increase the statutory maximum be treated as an element of the crime; it did not change the jurisprudence of unanimity. Moreover, Apprendi concerns what the State must prove to obtain a conviction, *not* the penalty imposed. Additionally, the Apprendi Court, specifically addressing capital sentencing schemes such as Florida's, stated that the holding did not affect their prior precedent in this area.

For all of these reasons, Jones's claim that the death penalty statute was unconstitutional as applied in this case must be denied.

WHEREFORE, Respondent respectfully requests that this Honorable Court DENY Jones's Petition for Writ of Habeas Corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail, to Robert Strain and April Haughey, Assistant CCRC, Office of the Capital Collateral Regional Counsel-Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619, this _____ day of November, 2001.

COUNSEL FOR RESPONDENT

CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

COUNSEL FOR RESPONDENT