

**IN THE SUPREME COURT OF FLORIDA**

MARSHALL LEE GORE,

Petitioner,

v.

CASE NO. SC02-684

MICHAEL W. MOORE, Secretary,  
Florida Dept. of Corrections,

Respondent.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW Respondent, Michael W. Moore, by and through undersigned counsel, and hereby responds to the petition for writ of habeas corpus filed in the above-styled cause. Respondent respectfully submits that the petition should be denied, and states as grounds therefore:

**Facts and Procedural History**

On June 28, 1989, the Grand Jury of Columbia County, Florida, returned an Indictment against Marshall Lee Gore, charging him with the first-degree murder premeditated murder, kidnapping and robbery of Susan Marie Roark. (OTR XXVI,

pages 2758-2759). Gore was represented at trial by Assistant Public Defender Jimmy Hunt. Following a jury trial, Gore was convicted as to all counts. At the conclusion of the penalty phase of Gore's trial, a death recommendation of 11-1 was made by the jury (OTR XXVI, page 2723), and the Court imposed a sentence of death April 3, 1990, after finding the aggravation outweighed the mitigation. (OTR XXVII, pages 3072-3081). Gore received a life sentence on the kidnapping and fifteen years on the robbery (OTR XXVII, pages 3065, 3072-3081), convictions, to be served consecutively with each other and the first-degree murder conviction. The trial court found four aggravating factors, (1) Gore had previously been convicted of other violent felony; (2) the murder was committed while Gore was engaged in a kidnapping; (3) the murder was committed for financial gain, and (4) the murder was cold, calculated and premeditated. In mitigation the trial court found evidence of Gore's poor childhood and antisocial personality, concluding that there was insufficient mitigation to outweigh the aggravating circumstances. (OTR XXV, pages 2741-2746).

The Florida Supreme Court affirmed Gore's convictions and sentences, Gore v. State, 599 So.2d 978 (Fla.), cert. denied, 506 U.S. 1003 (1993). The Court concluded that the cold, calculated and premeditated manner aggravating factor was not found beyond a reasonable doubt and held:

... To establish the heightened premeditation necessary for a finding of this aggravating factor, the evidence must show that the defendant had ‘a careful plan or prearranged design to kill.’ Rogers v. State, 511 So.2d 526, 533 (Fla. 1987) (emphasis added), cert. denied, 484 U.S. 1020, 108 S.Ct. 733, 98 L.Ed.2d 681 (1988). See also Porter v. State, 564 So.2d 1060, 1064 (Fla. 1990), cert. denied, 498 U.S. 1110, 111 S.Ct. 1024, 112 L.Ed.2d 1106 (1991); Rivera v. State, 561 So.2d 536, 540 (Fla. 1990). Here, the evidence established that Gore carefully planned to gain Roark’s trust that he kidnapped her and took her to an isolated area, and that he ultimately killed her. However, given the lack of evidence of the circumstances surrounding the murder itself, it is possible that the murder was the result of a robbery or a sexual assault that got out of hand, or that Roark attempted to escape from Gore, perhaps during a sexual assault, and he spontaneously caught her and killed her. There is no evidence that Gore formulated a calculated plan to kill Susan Roark. We therefore conclude that the State has failed to establish the evidence of this aggravating circumstance beyond a reasonable doubt. (Cites omitted).

599 So.2d at 986-987.

The Capital Collateral Representative (CCR), (later CCRC-N) became Gore’s collateral counsel and filed an initial shell motion for postconviction relief in 1994. In February 1997, a forty-five claim amended postconviction motion was filed and the State responded to said motion. A Huff hearing was held on May 8, 1997, pursuant to Huff v. State, 622 So.2d 982 (Fla. 1993), and in June 1997, the Court summarily denied forty-three of the claims based on various grounds: procedural bar, insufficiently pled, mootness and/or claims not cognizable in a 3.850. Although

insufficiently pled, the trial court did permit Gore's counsel's to amend claims VII and XVIII, which challenged the effectiveness of counsel at trial and at the penalty phase. On July 22, 1997, an amended motion was filed with regard to claims VII and XVIII.

In the June 13, 1997, order, the Court first scheduled the evidentiary hearing for September 1997. Various extensions of the evidentiary hearing date were obtained by CCR until a hearing was finally set for May 1998. However, in April 1998, CCRC-N filed a motion pursuant to Carter v. State, 706 So.2d 893 (Fla. 1997), asking for a determination of Gore's competency to proceed. Following a series of hearings and litigation as to this claim, the trial court, in November 1998, issued an order finding Gore competent to assist in his 3.850 litigation. A new hearing date was set for February 1999, however, the hearing was continued until July 1999. In June 1999, CCRC-N filed a notice of conflict with Gore and asked the Court to appoint substitute counsel for Gore. In July 1999, the Court allowed CCRC-N to withdraw and appointed Registry Counsel R. Glenn Arnold to represent Gore. The record reflects that Mr. Arnold attempted to file an amended postconviction motion in July 1999, but Gore refused to sign the newest amendment. Mr. Arnold then sought to proceed on the July 1997 amended motion (originally filed by CCR) and the Court granted that motion and set the evidentiary hearing for December 14, 2000.

Following the evidentiary hearing on December 14, 2000, wherein original trial counsel, Jimmy Hunt, was the only witness called to testify, the trial court denied all relief, again summarily denying forty-three claims that had previously been denied on various procedural grounds, and concluding that as to the ineffectiveness claims, the defendant had failed to prove his trial counsel was ineffective under the standards of Strickland v. Washington, 466 U.S. 668 (1984) (PCR IX, pages 1498-1513).

A notice of appeal was filed June 27, 2001, and Gore's initial brief was filed on or about March 18, 2002. An amended petition for writ of habeas corpus was filed April 24, 2002.

The pertinent facts surrounding the murder of Susan Marie Roark may be found in this Court's opinion, Gore v. State, 599 So.2d 978, 980-981 (Fla. 1992).

#### Legal Standards for Ineffectiveness Claims

The standard for determining the effectiveness of appellate counsel requires that Gore demonstrate deficient performance, i.e., that appellate counsel made serious errors and he did not function as counsel guaranteed by the Sixth Amendment, and that that deficient performance prejudiced Gore, i.e., "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland v. Washington, 466 U.S. 668, 687 (1984). Petitioner, in his habeas pleadings, must

demonstrate both deficient performance and prejudice. Asay v. State, 769 So.2d 974 (Fla. 2000), and Cherry v. State, 659 So.2d 1069, 1073 (Fla. 1995) (“the standard is not how present counsel would have proceeded, but rather there was both a deficient performance and a reasonable probability of a different result.”), see Johnson v. Dugger, 523 So.2d 161 (Fla. 1988): “Petitioner must show (1) specific errors or omissions which show that appellate counsel’s performance deviated from the norm or fell outside the range of professionally acceptable performance and (2) the deficiency of that performance compromised the appellate process to such a degree as to undermine competence in the fairness and correctness of the appellate result.” Wilson v. Wainwright, 474 So.2d 1162, 1163 (Fla. 1985). See Freeman v. State, 761 So.2d 1055, 1069-70 (Fla. 2000), wherein the Court observed:

. . . The defendant has the burden of alleging a specific, serious omission or overt act upon this claim of ineffective assistance of counsel can be based. See Knight v. State, 394 So.2d 997 (Fla. 1981). ‘In the case of appellate counsel, this means the deficiency must concern an issue which its error affected the outcome, not simply harmless error.’ Id., at 1001. In addition, ineffective assistance of counsel cannot be argued where the issue was not preserved for appeal or where the appellate attorney chose not to argue the issue as a matter of strategy. See Medina v. Dugger, 586 So.2d 317 (Fla. 1991); Atkins v. Dugger, 541 So.2d 1165, 1167 (Fla. 1989) (‘most successful appellate counsel agree that from a tactical standpoint it is more advantageous to raise only the strongest points on appeal and that the assertion of every conceivable argument

often has the effect of diluting the impact of the stronger points.’).

While appellate counsel cannot be faulted for failing to assert a procedurally barred or non-objected-to issue, Downs v. Wainwright, 476 So.2d 654, 657 (Fla. 1985); Provenzano v. Dugger, 561 So.2d 541, 548 (Fla. 1990); Atkins v. Dugger, 541 So.2d 1165, 1166 (Fla. 1989), more frequently, the issue is whether appellate counsel was ineffective for failing to raise a claim that would not have been successful on appeal. See Downs v. State, 740 So.2d 506, 517, n.18 (Fla. 1999); Rutherford v. Moore, 774 So.2d 637, 643 (Fla. 2000), and Alvord v. Wainwright, 725 F.2d 1282, 1291 (11<sup>th</sup> Cir. 1984). As observed in Jones v. Barnes, 463 U.S. 745 (1983), appellate counsel is not necessarily ineffective for failing to raise a claim that might have some possibility of success; effective appellate counsel need not raise every conceivable non-frivolous issue. See Provenzano, 561 So.2d at 548-59; Atkins v. Dugger, 541 So.2d at 1167.

Terminally, appellate counsel will not be deemed ineffective if the habeas claim, or a variant thereof, was in fact, raised on direct appeal. Atkins v. Dugger, 541 So.2d at 1166-67; Jones v. Moore, *supra*; Thompson v. State, 759 So.2d 650, 657, n.6 (Fla. 2000).

With regard to the underlying claims, in Mills v. State, 603 So.2d 482, 486 (Fla. 1992), the Court recognized that a claim that has been resolved in a previous review of the case is barred as “law of the case”. Likewise, claims properly raised and rejected in a previous Rule 3.850 motion for postconviction relief cannot be raised again on habeas. See Scott v. Dugger, 604 So.2d 465, 469-70 (Fla. 1992). Lastly, as noted in Blanco v. Wainwright, 507 So.2d 1377, 1384 (Fla. 1987), “an allegation of ineffective counsel will not be permitted to serve as a means of circumventing the rule that habeas corpus proceedings do not provide a second or substitute appeal”. The use of a different argument to relitigate an issue in postconviction proceedings is not appropriate. Porter v. Dugger, 559 So.2d 201, 203 (Fla. 1990); Medina v. Dugger, 586 So.2d 317, 318 (Fla. 1991); Hardwick v. Dugger, 648 So.2d 100, 106 (Fla. 1994); Breedlove v. Singletary, 595 So.2d 8, 10 (Fla. 1992), and Rutherford v. Moore, 774 So.2d 637, 643 (Fla. 2000).

## REASONS FOR DENYING THE WRIT

### Claim I

WHETHER APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO RAISE THE SUFFICIENCY OF THE EVIDENCE OF PREMEDITATED FIRST DEGREE MURDER.

Appellate counsel raised seven issues on direct appeal. Specifically, in claim IV, appellate counsel argued that a motion for judgment of acquittal should have obtained on the kidnapping count since the evidence demonstrate that Susan Roark voluntarily accompanied Gore. The Florida Supreme Court, in finding that there was substantial competent evidence to support the jury's verdict of guilt as to the kidnapping charge, rejected Gore's argument that the trial court should have granted a motion for judgment of acquittal on the kidnapping charge. While Gore now argues that appellate counsel rendered ineffective assistance of counsel because he did not also assert that there was no evidence of premeditation, the election not to challenge the sufficiency of the premeditation does not demonstrate deficient performance. It is clear that counsel determined which issues he believed were more compelling and more likely to obtain a reversal as to Gore's guilt and/or the appropriateness of the death penalty. The record reveals that of the seven issues raised, five of them pertain to the guilt portion of Gore's trial and the remaining two, the penalty phase.

Moreover, the record also shows that Gore asserted that the cold, calculated and premeditated aggravating factor was not proven beyond a reasonable doubt and the Florida Supreme Court concurred. While the Court agreed with Gore that the defendant did not have a "careful plan or prearranged design to kill", pursuant to

Rogers v. State, 511 So.2d 526, 533 (Fla. 1987), there was sufficient evidence to demonstrate that he killed her. Gore v. State, 599 So.2d at 890.

In Page v. United States, 884 F.2d 300, 302-303 (7<sup>th</sup> Cir. 1989), that Court held that where the defendant has failed to show that appellate counsel “omitted a dead-bang winner even while zealously pressing other strong (but unsuccessful) claims”, counsel’s ineffectiveness is not proven. See Freeman v. State, 761 So.2d at 1070-71.

Moreover, the evidence at trial demonstrates premeditation. The record reflects that Susan Roark did leave with Gore on Saturday evening for the sole purpose of taking Gore home. She told Michelle Trammell that she was going to take “Tony” home and that she wanted Michelle to accompany her. She planned to spend the night with Michelle Trammell and had earlier called her grandmother to inform her that she would be home in time to go to church the next morning. Ruth Roark testified that her granddaughter called her at approximately 10:00 p.m., January 30, 1988, and told her that she, Susan, was going to spend the night with Michelle, and that she would be back the next morning at 7:00 a.m., to go to church. Eric Hammond, also a party attendee, testified that Susan had a purse that night and when she left around 12:00 a.m., with “Tony”, she planned to take him home. The next day, on January 31, 1988, Gore showed up in Tampa, Florida, at the doorstep of Susan Brown with jewelry and the black Mustang belonging to Susan Roark. When the skeletal remains of Miss

Roark were located, they found in a trash dump the body unclothed, with evidence shown beyond a medical certainty that her death resulted from a homicide.

Based on the foregoing, it is clear appellate counsel did not render ineffective assistance when he chose not to challenge the sufficiency of the premeditation but rather challenge whether the charge of kidnapping had been proven beyond a reasonable doubt and the appropriateness of the cold, calculated and premeditated manner aggravating factor applied.

### Claim II

#### WHETHER APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE OF CIRCUMSTANTIAL EVIDENCE.

Gore next argues that in order to convict based on the facts presented at trial, the jury would necessarily have had to “pyramid inference upon inference.” Without specifically citing what inferences were “pyramided” upon what inferences, he cites to the decision in State v. Law, 559 So.2d 187, 189 (Fla. 1989), and Keys v. State, 606 So.2d 669, 673 (Fla. 1<sup>st</sup> DCA 1992), as authority for his position.

Initially, the State would again submit that appellate counsel is not ineffective for failing to raise meritless claims on direct appeal. Even if there were merit to this issue,

counsel can not be found to be ineffective unless, it can also be shown, that absent this claim being raised, appellate review of Gore's case is suspect.

As observed in State v. Law, 559 So.2d 187, 189 (Fla. 1989):

. . . A motion for judgment of acquittal should be granted in a circumstantial evidence case if the State fails to present the evidence from which the jury can exclude every reasonable hypothesis except that of guilt. See Wilson v. State, 493 So.2d 1019, 1022 (Fla. 1986). Consistent with the standards set forth in Lynch, if the State does not offer evidence which is inconsistently the defendant's hypothesis, 'the evidence [would be] such that no view which the jury may lawfully take of it favorably to the [State] can be sustained under the law.' 293 So.2d at 45. The State's evidence would be as a matter of law 'insufficient to warrant a conviction.' Florida Rule of Criminal Procedure 3.380.

It is the trial judge's proper task to review the evidence to determine the presence or absence of competence of evidence from which the jury could infer guilt to the exclusion of all other inferences. That view of the evidence must be taken in the light most favorable to the State. Spinkellink v. State, 313 So.2d 666, 670 (Fla. 1975), cert. denied, 428 U.S. 911, 96 S.Ct. 3227, 49 L.Ed.2d 1221 (1976). The State is not required to 'rebut conclusively every possible variation' of events which could be inferred from the evidence but only to introduce competent evidence which is inconsistent with the defendant's theory of events. See Toole v. State, 472 So.2d 1174, 1176 (Fla. 1985). Once that threshold burden is met, it becomes the jury's duty to determine whether the evidence is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt.

559 So.2d at 189.

The record reflects in Law that the Florida Supreme Court reversed the State's appeal "because we find that it is clear from the record that the State introduced competent evidence from which the jury could have reasonably rejected each of Law's theories, the result reached by the district court cannot stand. . . .". 559 So.2d at 192.

Based on the facts of the instant case, it is clear the State met any burden required under the Law decision with regard to whether in fact Gore murdered Susan Marie Roark. Appellate counsel did not render ineffective assistance of counsel for failing to argue that there was only circumstantial evidence with regard to the murder, the kidnapping and the robbery of Susan Roark.

### Claim III

WHETHER APPELLATE COUNSEL WAS  
INEFFECTIVE FOR FAILING TO ARGUE THE TRIAL  
COURT SHOULD HAVE EXCUSED FOR CAUSE  
JUROR HOLLINGSWORTH.

Albeit Gore concedes that prospective juror Hollingsworth was removed by a peremptory challenge, he argues that it was error to deny the original challenge for cause, because defense counsel ran out of peremptory challenges and had to ask for additional challenges resulting in prejudice, citing (OTR III, page 664).

First of all, what defense counsel said on page 664, was:

MR. HUNT: Before we go any further, I ask that the Court reconsider my motion for additional peremptory challenges, in light of the fact, that I have to burn one of them to excuse juror Hollingsworth, I ask the Court to give us thirteen.

THE COURT: Denied.

What the record further reflects, however, is that at the end of jury selection (OTR XI, page 831), Mr. Hunt admitted that he still had four peremptory challenges left.

Moreover, he has not asserted how, appellate counsel's determination not to raise this claim, prejudiced him. The record reflects that Hollingsworth did not sit as a juror, the record further reflects that Mr. Hunt did not run out of peremptory challenges and Gore has identified no juror who sat has been proven objectionable.

The record reflects that Gore, in his amended motion for postconviction relief, asserted that trial counsel erred in not objecting to a number of jurors who sat with regard to their exposure to the facts in Gore's case. The trial court, in summarily denying relief, asserted that this claim was procedurally barred. However, a review of the facts asserted in the 3.850 reflect that the issue as to whether those jurors could have been removed for cause or a peremptory challenge, was not objected to below. Appellate counsel cannot be found wanting for failing to raise issues which were not

preserved below. Moreover, he cannot be found to be wanting where the underlying basis for the issue is groundless. Gore is entitled to no relief as to this claim.

#### Claim IV

#### WHETHER APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE CONCERNING THE DEFENDANT'S BEING SHACKLED IN THE PRESENCE OF THE JURY.

The record reflects that at the commencement of the jury selection process, Gore was seen in the doorway entering the courtroom with shackles or braces on his legs. (OTR VIII, pages 220-225). The trial court, after viewing Gore in his braces, ordered that he be brought into the courtroom without shackles and that for the days that followed, he wore garments that would not expose the braces or anklets to the jury. The record reflects:

MR. HUNT: Judge, at the hearing this morning on the motion in chambers, we brought up the matter of the defendant being shackled, outside the presence of the jury venire.

Immediately following a court's ruling, the defendant got up and left the chambers, the door to the courtroom was open and he started through the courtroom door.

At that point the jury venire was present in the courtroom, Mr. Gore at that particular time was still in shackles. Even though the court had ordered them to be removed, the deputy had not had an opportunity to remove them, and

Mr. Gore started through the door into the courtroom. He was in shackles and he was available to any of the jurors, who were looking in that direction, it would have been visible to any of the jurors looking.

(OTR VIII, pages 225-226).

Mr. Hunt continued:

MR. HUNT: Leg braces. The hearing on the issue of the leg braces this morning, the court ordered that they be removed today, that long trousers be available by tomorrow. My client will wear those braces tomorrow.

At the conclusion of the hearing, my client walked, Mr. Gore walked out of the hearing room, the door to the courtroom was open, Mr. Gore was walking in a stiff-legged manner, as if the leg braces were locked in position, not allowing him to bend his legs.

At that point, the jury venire was seated in the courtroom, and he would have been visible to those looking in that direction. He just started into the courtroom, Mr. Miller, the deputy in charge of the client and other deputy tugged on his sleeve and told him not to go into the courtroom and come around to the holding cell, that the leg braces were to be removed.

Apparently Mr. Gore did not understand the Court's ruling that they would be removed today.

I am prepared to offer testimony to back those allegations, the events of what happened, and the Court could at this point – (interrupted)

THE COURT: How far into the courtroom did he get?

THE BAILIFF: He was in the doorway, Sir.

MR. DEKLE: Let me say something, if the defendant had been following the instructions given by his keeper, he wouldn't have come into the courtroom, but come back to the holding cell, he did it to himself.

The second thing is, that between the jury and the defendant, there is a high rail out . . . not quite hip high, what the Court's concern was, as far as the leg brace, concerning — is the ankles show under the bottom of the pants of the defendant, and the defendant is going to wear the braces tomorrow.

An inadvertent view of the defendant in handcuffs has been held would not be of such a nature as to warrant a mistrial. I was looking for that case, but I couldn't find it right off. Defendant, number one, did it to himself, number two, it was very brief period of time, number three, there is a rail between the defendant and the jury, there has not such sufficient prejudice been shown, specifically since, if he had been following instructions it wouldn't have happened, to warrant a mistrial.

THE COURT: Let me speak to this.

In chambers, I instructed Mr. Gore and looking him straight in the eyes, I told him where to go to take those leg braces off, I want it clear on the record, the leg braces are under his pants and not visible, and there is a leather, black leather strap that perhaps could be seen, if one were paying notice or attention.

Mr. Gore would have had to intentionally fail to follow the instructions of the Court and headed into the courtroom, knowing that the venire was there, rather than following my

instructions of going into the holding cell behind the courtroom, which he failed to follow, to do.

It is my opinion that the leg braces under the pants are not obvious or visible and the jury could not have determined any adverse effect from his standing in the doorway.

I'm going to proceed and if during recess, you want to put on record as many objections as you want to, fine, but that will be my ruling. Are the leg braces off now?

MR. HUNT: Yes, Sir.

THE COURT: Today before he leaves, I want them back on and I want photographs made on him standing in the doorway and you standing out there.

(OTR VIII, pages 226-229).

Further discussion ensued wherein the Court asked defense counsel whether he wanted to question potential jurors during the individual voir dire as to whether they saw the shackles. Upon reflection, defense counsel stated that he was not requesting the Court to do that. (OTR VIII, page 230-231).

No further discussions with regard to the shackling apparently occurred after that point.

The instant scenario described from the original trial record was resolved to the satisfaction of defense counsel in that he concurred that from that point on, Gore would be attired in appropriate pants that covered the shackles therefore the jury

would not see the braces. The only issue that could have been raised was whether any jurors saw Gore in the shackles standing in the doorway. The record bears out that defense counsel affirmatively elected not to inquire of the venire whether any of those individuals noticed the shackles.

Appellate counsel did not render ineffective assistance of counsel for failing to raise a claim that was strategically not preserved below.

Gore's reliance on Elledge v. Dugger, 823 F.2d 1439, 1451-1452 (11<sup>th</sup> Cir. 1987), is not well taken. In Elledge, the Court reversed on the shackling issue because, (1) Elledge was not given an opportunity to challenge "the untested information that served as the basis for the shackling" and, moreover, (2) the Court found that the State at no time made any showing that the shackling was necessary to further an essential state interest. Neither of those issues are preserved herein. Defense counsel's concern about the shackling had nothing to do with whether the defendant should be shackled but rather that potential jurors might have seen him shackled in the doorway. The trial court remedied the concerns.

See Sireci v. Moore, 27 Fla.L. Weekly S183 (Fla. February 28, 2002), wherein the Court held:

Fourth, the petitioner asserts that his appellate counsel was ineffective for failing to argue on appeal that Mr. Sireci's constitutional rights were violated by the trial court's order

that required him to remain shackled during the new penalty phase of his trial. It is well established that the decision to restrain a criminal defendant in the presence of the jury is subject to very close judicial scrutiny. It is just as plain, however, that it is well within a trial court's authority to restrain a defendant 'when circumstances involving security and safety of the proceeding warrant it.' Bryant v. State, 785 So.2d 422, 428 (Fla. 2001). In addition, brief exposure of the jury to the defendant in prison garb or restraints is not per se prejudicial so as to require a mistrial. See Singleton v. State, 783 So.2d 970, 976 (Fla. 2001); Neary v. State, 384 So.2d 881, 885 (Fla. 1980).

In the instant case, there is nothing in the record that leads us to conclude that the jury ever saw Mr. Sireci in restraints. Indeed, the trial court here made every effort to keep the petitioner's restraints from being viewed by the jury by placing tables in front of his seat. Additionally, the trial court certainly had justification for restraining the petitioner – an alleged attempt by the petitioner to have his brother-in-law killed to that he could not testify for the State. See Sireci v. State, 399 So.2d 964, 968 (Fla. 1981). Thus, the instant case is much like Correll v. Dugger, 558 So.2d 422 (Fla. 1990), where this Court held that appellate counsel could not be faulted for not complaining of the restraints placed on his client at trial. There, as here, the trial court concluded that the defendant was a security risk, placed items in front of the defense table, and had defendant shackled. See id., at 424. The longstanding principle that trial judges must have discretion to properly manage their courtroom, in combination with a complete absence of evidence indicating any prejudice to the petitioner, requires this Court to deem the argument without merit.

Likewise, in the instant case, appellate counsel did not err in not raising this claim on direct appeal.

Conclusion

Based on the foregoing, all relief should be denied as to the claims raised in  
Petitioner's Petition for Writ of Habeas Corpus.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
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COUNSEL FOR RESPONDENT

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to R. Glenn Arnold, 210A East Government Street, Pensacola, Florida, 32501, this 2<sup>nd</sup> day of August, 2002.

\_\_\_\_\_  
CAROLYN M. SNURKOWSKI  
Asst. Deputy Attorney General

Certificate of Compliance

This pleading was produced in Courier New 12 point, a font which is not proportionately spaced.

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CAROLYN M. SNURKOWSKI  
Asst. Deputy Attorney General