

minimum mandatory on each count, as well as his ability to apply the presumption of innocence (OR. 1527-1528).

↓ state does not dispute Winburn's relationship

Lambrix also suggests that the fact that juror Winburn's stepson was a sheriff's deputy should have been a reason to excuse Winburn from the panel (OR. 1629). However, Winburn stated that he did not discuss police business with his stepson, and they had not discussed this case at all (OR. 1629). Winburn had no fixed opinions about the case, and stated that he could be fair and impartial (OR. 1629). <sup>↗ not credible - obviously he would say this if it would help to get a conviction and thus end the FBI investigation against his son -</sup> The stepson, of course, was not a witness in the trial (OR. 1629).

Defense counsel also asked Winburn about his relationship with his stepson, and Winburn stated that he would not give any more credibility to police witnesses than he would any other person (OR. 1649). Counsel also inquired as to Winburn's understanding of the state's burden of proof and the presumption of innocence (OR. 1651, 1657). <sup>⊕ Clearly, if Winburn wanted to help his stepson by convicting me, he would lie about being impartial</sup>

Juror Walsh is also identified as a juror that should have been excused due to her relationship with a sheriff's department employee (OR. 1469). Walsh stated that she and her roommate, a correctional officer, typically did not discuss pending cases, and her only knowledge of the case was from newspapers (OR. 1469-70, 1472, 1522). She did not have any fixed opinions as to the issues involved and stated she could put aside what she had read and did not believe everything she saw in the paper (OR. 1472). Again, the record reflects that defense counsel explored any impact that Walsh's relationship with her roommate might have on her ability to be fair, and Walsh noted that officers "are human just like everybody else" (OR. 1526).

Counsel cannot be deemed ineffective for failing to excuse jurors that have knowledge about the case, as long as the jurors indicate that they can lay aside any preconceptions and base

their verdict on the evidence adduced at trial. White v. Singletary, 972 F.2d 1218, 1223 (11th

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not fair; As case law establishes (see Georgetown), jurors' claim of being able to follow law and lay aside any preconceptions mean nothing if "obvious prejudice" exists, such as a personal interest or motive in finding defendant guilty, like Winburn > finding me guilty would help his son → the pending FBI investigation

Cir. 1992), cert. denied, \_\_\_ U.S. \_\_\_, 115 S. Ct. 2008 (1993). Since all of the jurors discussed by the appellant so indicated, Lambrix is not entitled to relief due to their presence on his jury.

As to the suggestion that counsel should have preserved for appellate review the trial court's failure to strike veniremen Collins and Lanier for cause, the record reflects that both jurors stated that they could follow the judge's instructions, set aside any preconceived notions, and decide the case solely on the evidence heard (OR. 1535, 1632). *Both were directly related to victim Bryant!* Both also noted that if the state failed to prove its case beyond a reasonable doubt, they would find Lambrix not guilty, regardless of anything they had read or heard about the case (OR. 1536, 1648). Excusal for cause would not be warranted from these responses. Hitchcock v. State, 578 So. 2d 685 (Fla. 1990), vacated on other grounds, \_\_\_ U.S. \_\_\_, 120 L. Ed. 2d 892 (1992). Therefore, counsel cannot be found to have been ineffective for failing to preserve this issue for appeal.

Similarly, the fact that counsel did not recognize that juror Hough had been a member of the venire from which the jury for Lambrix's first trial had been chosen does not justify a finding that counsel was ineffective. There has been no showing that any competent counsel would have been able to identify all 225 people from the first venire which had been gathered over two months before the retrial commenced (Motion, App. 8).<sup>6</sup> *what? Trial counsel can't simply read the list?* In addition, although Lambrix continues to ascribe some level of juror misconduct to juror Hough for failing to volunteer that she had been present (although not questioned) in the first venire, this Court has explicitly rejected this suggestion. Lambrix, 559 So. 2d at 1138.

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<sup>6</sup>The appendices to the 3.850 motion filed below are currently being supplemented to the record on appeal.

On these facts, Lambrix has failed to establish that his attorneys were deficient in the jury selection stage of his trial. This Court must deny relief on this issue as well.

## ISSUE VII

WHETHER TRIAL COUNSEL'S FAILURE TO INVESTIGATE AND PRESENT AVAILABLE, COMPELLING MITIGATING EVIDENCE AND TO PROVIDE THE MENTAL HEALTH EXPERT WITH ANY RECORDS OR BACKGROUND INFORMATION DEPRIVED MR. LAMBRIX OF HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN THE PENALTY PHASE OF HIS CAPITAL TRIAL.

The appellant's next claim also alleges ineffective assistance of counsel, and has previously been rejected by this Court, the trial court, a federal district court, and the Eleventh Circuit Court of Appeals. Thus, the trial court was correct in summarily denying it. Zeigler, 632 So. 2d at 51.

Lambrix contends that "immensely powerful" mitigation existed in this case that was never investigated or presented by his trial counsel. Specifically, Lambrix claims that his trial attorneys failed to present testimony from family members and mental health experts as to Lambrix's alleged neglect and abuse as a child and, therefore, counsel allegedly rendered ineffective assistance at penalty phase. However, Lambrix has not demonstrated either deficient conduct or prejudice therefrom.

There is no absolute duty to present mitigating character evidence, only the obligation to conduct a reasonable investigation. Lightbourne v. Dugger, 829 F.2d 1012, 1025 (11th Cir. 1987), cert. denied, 488 U.S. 934 (1988). Although the failure to conduct *any* investigation of a defendant's background may fall outside the scope of reasonably competent counsel, a strategic decision to present less than all possible available mitigation evidence after a sufficient investigation will not support a finding of ineffectiveness. Id.

In the instant case, trial counsel extensively investigated Lambrix's background. Both trial attorneys and their investigator spoke to Lambrix's parents, brothers, sisters, and relatives, about "family history, any history that we felt of Mr. Lambrix that might be helpful in the penalty phase" (R. 301, 303, 334, 346). Mr. Jacobs, who had been a public defender since 1973 and had done "5 or 6" capital cases prior to the instant trial, spoke with the family members "at length" about Lambrix's background (R. 335, 336). Lambrix's ex-wife and child were also discussed (R. 329, 330). Jacobs stated that he knew that "a serious drinking problem," "school records" and "medical records" were all important and relevant in the penalty phase (R. 334, 335). Jacobs added that he had at least some medical records and Department of Corrections records indicating Lambrix had an alcohol problem (R. 313, 314, 334). Jacobs remembered some of the family members telling him about Lambrix's drinking (R. 320). He discussed alcoholism with Dr. Whitman (R. 315). Finally, Jacobs recalled that Dr. Whitman also "basically classified" Lambrix as an antisocial personality, which if brought up at the penalty phase, would hurt Lambrix (R. 329). Dr. Whitman had implied that an antisocial personality meant that Lambrix was "just mean" (R. 266, 329).

Following the extensive investigation related above, trial counsel chose to present less than all the information they had uncovered. At the penalty phase, they presented testimony from five members of Lambrix family: his sister Janet, his brothers Jeff and Donald, Jr., his father and his stepmother (OR. 2589-2624). Trial counsel portrayed Lambrix as a quiet, nonviolent, mild mannered, passive, helpful and loving individual who had been abandoned by his natural mother on the streets at an early age, had had to go to work and drop out of school at an early age, but had nevertheless returned and completed his G.E.D. and pursued biblical studies, and who had

enlisted in the Army and been honorably discharged after sustaining back and head injuries in an accident in the barracks (OR. 2589-2624; 2659-2661). Trial counsel further portrayed Lambrix as an individual whose problems with the law had started only after the head injuries sustained in the Army and had previously been limited only to a “bad check” and “traffic cases.” Finally, in an attempt to maintain credibility with the jury in keeping with the theory of innocence presented at the guilt phase, each family member emphasized that they could not believe Lambrix had committed these crimes in view of his lack of any prior violence (OR. 2589-2624).

In Strickland, the United States Supreme Court emphasized that, in determining whether counsel’s performance was constitutionally deficient, the challenged conduct must be evaluated from counsel’s perspective at the time. 466 U.S. at 689. The focus of Lambrix’s argument herein is that, after several years and undisclosed tactics, Lambrix’s collateral attorneys have succeeded in having people sign affidavits indicating that they could think of something nice to say about Lambrix or outlining his childhood difficulties. Thus, the argument in this issue is premised on the claim that a more thorough and detailed presentation could have been made to his jury. However, that fact clearly does not establish that performance was deficient. Maxwell v. Wainwright, 490 So. 2d 927, 932 (Fla. 1986).

Lambrix has failed to show that the strategy to present only favorable, positive penalty phase testimony about him was unreasonable. As in Spaziano v. Singletary, 36 F.3d 1028, 1041 (11th Cir. 1994), cert. denied, \_\_\_ U.S. \_\_\_, 115 S. Ct. 911, 130 L. Ed. 2d 793 (1995), “[t]here is nothing in the record to indicate that [Lambrix’s] present counsel are either more experienced or wiser than his trial counsel, but even if they were, the fact that they would have pursued a different strategy is not enough.” If the best lawyers or even most good lawyers “could have

conducted a more thorough investigation that might have borne fruit,” it does not mean that these attorneys’ performance fell outside the wide range of reasonably effective assistance. Id.

Consideration of the merits of this claim led the Eleventh Circuit to conclude that the performance of Lambrix’s trial attorneys was not deficient. 72 F.3d at 1504-1507. This conclusion was based on a review of the evidentiary hearing conducted in the federal district court. At the time of the hearing, the appellant was represented by his current counsel and was not under an active death warrant -- he clearly has no claim that he was precluded from fully developing this issue for review in the Eleventh Circuit. The finding that the appellant failed to satisfy even the first prong of the Strickland standard in this case should be adopted to defeat this claim.

A review of other cases supports the conclusion that no ineffective assistance of counsel has been shown on the facts of this case. For example, in White, 972 F.2d at 1218, trial counsel had spoken to family members, and presented five witnesses, including White’s mother, uncle, and fiancé. The court held that this was clearly distinguished from cases showing a lack of any investigation. “A lawyer can almost always do something more in every case - the Constitution requires a good deal less than maximum performance.” Id., at 1225.

Similarly, in Lightbourne, 829 F.2d at 1024, the defendant was the only witness at the penalty phase of his trial. He testified about his age, citizenship, lack of significant criminal record, children and education. At the hearing on his ineffective counsel claim, there were twenty-seven affidavits offered from his family and friends to demonstrate his impoverished childhood. Counsel was found to have been effective since most of the proffered evidence was cumulative to Lightbourne’s own testimony. In rejecting the claim, the court noted that “It is

evident that an investigation was conducted and that counsel thereafter elected to put the petitioner on the stand.” 829 F.2d at 1026.

In Bertolotti v. Dugger, 883 F.2d 1503 (11th Cir. 1989), cert. denied, 497 U.S. 1031, 1032 (1990), a reasonable penalty phase investigation was found based on counsel having interviewed Bertolotti’s parents and having the parents complete a questionnaire. And in Ferguson v. State, 593 So. 2d 508 (Fla. 1992), the court noted that although the attorney had not exhausted all sources of information by obtaining school, medical, and court records, there was no deficient penalty phase performance as counsel had interviewed family members, presented the testimony of Ferguson’s mother, and explored possible mental mitigation but made a tactical decision not to call the mental experts as witnesses.

Trial counsels’ tactic at sentencing in introducing good character testimony and emotional appeal, as opposed to a history of alcohol and drug abuse (with the ensuing prior history of criminal conduct) and medical proof thereof, did not constitute deficient conduct. See, Stanley v. Zant, 697 F.2d 955, 966 (11th Cir. 1983) (“decision that good character testimony would be inconsistent with a mentally disturbed defense was perfectly reasonable. Although these two types of testimony need not be inconsistent, [counsel] could have reasonably determined that in this case a local jury would perceive them to be inconsistent. In short, counsel’s tactical decision did not constitute ineffective assistance”), cert. denied, 467 U.S. 1219 (1984), quoting Gray v. Lucas, 677 F.2d 1086 (5th Cir. 1982), cert. denied, 461 U.S. 910 (1983); Harich, 844 F.2d at 1470 (“although inconsistent and alternative defenses may be raised, competent trial counsel know that reasonableness is absolutely mandatory if one hopes to achieve credibility with the jury”); Bertolotti, 883 F.2d at 1519 (“penalty phase tactical theory was to portray Bertolotti as a normal

man from a happy and loving family whose life deserved to be spared; in light of the weakness of Bertolotti's psychiatric evidence [testimony from mental health experts that Bertolotti had a family history of schizophrenia and was insane at the time of the crime] this tact would continue to be a reasonable strategy"); Funchess v. Wainwright, 772 F.2d 683, 689-690 (11th Cir. 1985) (counsel not ineffective for failing to present background evidence of childhood abuse and "heavy but 'medicinal use of heroin'" in view of tactic of maintaining innocence), cert. denied, 475 U.S. 1031 (1986); Card v. Dugger, 911 F.2d 1494, 1511 (11th Cir. 1990) (presentation of brief family testimony as to defendant's difficult childhood was not deficient conduct where counsel's assessment was that a deprived childhood would not have a beneficial impact on the local jury as many of the jurors from that region had had difficult lives, but had not turned to criminal conduct), cert. denied, \_\_\_ U.S. \_\_\_, 114 S. Ct. 121 (1991); Clark v. Dugger, 834 F.2d 1561, 1568 (11th Cir. 1987) (counsel's decision not to present some available mitigating evidence in order to control ensuing damaging evidence was not deficient but correct and virtually unchallengeable), cert. denied, 485 U.S. 982 (1988).

At the federal evidentiary hearing, in contrast to the above strategy, Lambrix presented testimony of his natural mother and two aunts who had not seen Lambrix since the age of six to the effect that his father and father's family had a history of abusing alcohol. Lambrix also presented testimony from his sisters Mary and Debra who stated that Lambrix abused alcohol and drugs from an early age. Although Lambrix now relies upon affidavits from these witnesses, as well as other affiants detailing his life history, trial counsel cannot be deficient for failing to present them in the penalty phase.

At the time of trial, Lambrix had stated that his mother “didn’t want us and she’s probably lying”<sup>3</sup> (Motion, App. 7, p. 3). He also denied having been subjected to physical or sexual abuse as a child (Motion, App. 7, p. 4). Lambrix’s two sisters, who testified as to his history of drug and alcohol abuse, were by their own admission not available to testify at the time of trial. Debra was in Texas and incapable of helping anybody but herself from 1982 through 1987 (R. 460-461, 468-469). Mary had already been caught lying for Lambrix and did not wish to testify at all (R. 506-507, 512). See, Elledge v. Dugger, 823 F.2d 1439, 1446 (11th Cir. 1987) (no deficient conduct is demonstrated when petitioner merely produces witnesses years after trial without demonstrating their availability at the time of trial), cert. denied, 485 U.S. 1014 (1988); Mitchell v. Kemp, 762 F.2d 886, 889 (11th Cir. 1985) (defendant’s own statements as to the availability of family members are of utmost importance and counsel will not be found ineffective simply because years later the defendant claims that his own statements should have been disregarded), cert. denied, 483 U.S. 1013, 1026 (1987).

Lambrix also relies on a proffer by Dr. Sharon Maxwell, a mental health expert that allegedly would have testified about the difficulties Lambrix faced in his life (Motion, App. 18). A review of the proffer demonstrates that it is nothing more than a summary of reports from other family members and childhood acquaintances as to Lambrix’s life history. In addition, the proffer does not establish that Maxwell would have been available at the time of trial. Thus, no claim of ineffective counsel can be gleaned from the proffer. See, Elledge, 823 F.2d at 1446.

In order to establish prejudice to demonstrate a sixth amendment violation in a penalty phase proceeding, a defendant must show that, but for the alleged errors, the sentencer would have weighed the balance of the aggravating and mitigating factors and find that the circumstances

did not warrant the death penalty. Strickland, 466 U.S. at 694. Strickland also counsels that, if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, it is not necessary to address whether counsel's performance fell below the standard of reasonably competent counsel. 466 U.S. at 697.

In Buenoano v. Dugger, 559 So. 2d 1116 (Fla. 1990), trial counsel had failed to present mitigating evidence that Buenoano had an impoverished childhood and was psychologically dysfunctional. Buenoano's mother had died when Buenoano was young, she had frequently been moved between foster homes and orphanages where there were reports of sexual abuse, and there was available evidence of psychological problems. Without determining whether Buenoano's counsel had been deficient, the court held that there could be no prejudice in the failure to present this evidence in light of the aggravated nature of the crime. The mitigation suggested in the instant case is much less compelling than that described in Buenoano, and this case is every bit as aggravated.

In light of the five aggravating circumstances presented in this brutal double homicide, and the background information that was presented at penalty phase, Lambrix has not demonstrated that the presentation of additional testimony as to his life struggles would have tipped the balance of aggravating and mitigating circumstances in his favor. Bertolotti, 883 F.2d at 1519; Lusk v. Dugger, 890 F.2d 332, 338-340 (11th Cir. 1989); Daugherty v. Dugger, 839 F.2d 1426, 1432 (11th Cir.), cert. denied, 488 U.S. 871 (1988).

Lambrix has not and cannot meet the standard required to prove that his attorneys were ineffective when the facts to support the aggravating factors are compared to the purported mitigation now argued by collateral counsel. Since he has failed to demonstrate either deficient

performance or prejudice resulting therefrom, this Court should affirm the denial of relief on this claim.

## ISSUE VIII

### WHETHER MR. LAMBRIX WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL BY TRIAL COUNSEL'S FAILURE TO OBJECT TO INSTRUCTIONS THAT ALLOWED THE JURY TO WEIGH UNCONSTITUTIONALLY VAGUE AGGRAVATING CIRCUMSTANCES.

The appellant's next claim asserts that his trial counsel rendered constitutionally deficient performance in failing to object to the jury instructions defining the aggravating circumstances of "cold, calculated, and premeditated" and "pecuniary gain." This identical claim was previously rejected by this Court as procedurally barred. Lambrix, 641 So. 2d at 849. In addition, the appellant has failed to show that competent counsel trying the case in 1983 would have objected to these instructions. Although the cold, calculated and premeditated jury instruction has since been identified as constitutionally vague, that conclusion was not reached until this Court's decision in Jackson v. State, 648 So. 2d 85 (Fla. 1994). At the time of Lambrix's trial, any possible deficiency with a jury instruction defining an aggravating circumstance was deemed inconsequential since the jury's role was not characterized as a "sentencer." See, Smalley v. State, 546 So. 2d 720, 722 (Fla. 1989).

Clearly, the failure to have anticipated the changes brought to Florida's death penalty sentencing scheme pursuant to Espinosa v. Florida, 505 U.S. 1079, 112 S. Ct. 2926, 120 L. Ed. 2d 854 (1992), and thereafter applied to the cold, calculated and premeditated jury instruction in Jackson cannot be a basis for finding that counsel's performance was constitutionally deficient.

Nelms v. State, 596 So. 2d 441, 442 (Fla. 1992) (failure to anticipate changes in the law does not establish deficiency).

As to the failure to object to the pecuniary gain instruction, no deficiency can be identified since in fact the instruction is clearly constitutionally adequate. There is no authority to support the assertion that the pecuniary gain instruction given to Lambrix's jury was unconstitutionally vague. The jury was advised that it could consider as an aggravating circumstance, if established by the evidence, that "the crime for which the Defendant is to be sentenced was committed for pecuniary gain" (OR. 2663). This instruction does not suffer the same constitutional defects identified in the heinous, atrocious or cruel, and cold, calculated and premeditated instructions. It uses ordinary words which are not subject to divergent meanings and clearly informs the jury that a desire for financial gain must have been a motivating factor in the murder.

Lambrix argues that the pecuniary gain instruction failed to provide sufficient guidance for the jury because it failed to inform the jury of the limiting constructions placed on the factor by this Court. However, the jury was instructed that it must determine the purpose for the murder. In Jackson, 648 So. 2d at 90, this Court noted that the Constitution does not require every construction of an aggravating factor to be incorporated into a jury instruction defining the factor. The pecuniary gain definition given to Lambrix's jury used ordinary words which are commonly understood, not subject to misinterpretation or arbitrary application. Thus, the jury was properly instructed as to this factor.

This Court has already determined in this case that appellate counsel was not ineffective for failing to challenge the adequacy of the heinous, atrocious or cruel aggravating factor (which was objected to by trial counsel), since the argument would have been rejected at the time of

Lambrix's appeal. Lambrix, 641 So. 2d at 849. This finding refutes the ineffective assistance of counsel argument now asserted as to the cold, calculated and pecuniary gain factors for several reasons. First, it is apparent that even if these instructions had been objected to at the time of trial, they would not have been challenged on appeal since the instruction which was preserved was not challenged. In addition, even if the challenge had been argued on appeal, it would have been rejected by this Court. Furthermore, because the facts of this case demonstrate the applicability of these factors even as limited by this Court's decisions, any possible error in the adequacy of these instructions would clearly be harmless beyond any reasonable doubt. Therefore, there is no possibility that the appellant was prejudiced from his attorneys' failure to object to these instructions.

Since there was no authority to support a challenge to these instructions at the time of trial, and any challenge that might have been made would not have been pursued or accepted on appeal, trial counsel may not now be found to have been ineffective for failing to object to the instructions. Therefore, Lambrix is not entitled to relief on this issue as well.

## ISSUE IX

### WHETHER THE TRIAL COURT ACTED ARBITRARILY IN FINDING AND WEIGHING THE PECUNIARY GAIN AGGRAVATING FACTOR.

The appellant's next claim is clearly procedurally barred as an issue that must have been raised on the direct appeal of the judgments and sentences imposed in this case, and therefore was properly rejected by the court below. Torres-Arboleda, 636 So. 2d at 1323. Significantly, the appellant does not even attempt to explain why this claim should be considered, and his arguments seeking an exception to the procedural rule prohibiting successive motions for postconviction relief do not apply to this claim.

In addition, this claim is specifically rejected by this Court's opinion in the direct appeal of Lambrix's judgments and sentences, explicitly noting that "After a careful review of the record, we agree with the trial judge and all of the parties involved that five aggravating circumstances apply to the murder of Moore and four aggravating circumstances apply to the murder of Bryant." Lambrix, 494 So. 2d at 1148. The Eleventh Circuit agreed that the record in this case adequately supports the pecuniary gain factor. 72 F.3d at 1508. Furthermore, this factor was clearly applicable since Lambrix told witnesses that the murders were motivated by his desire to get Moore's car (OR. 2449). Such an admission is inconsistent with the suggestion that the taking of the property from the victims was only an "afterthought" and supports the finding of the pecuniary gain aggravating circumstance. Atwater v. State, 626 So. 2d 1325 (Fla. 1993), cert.

denied, \_\_\_ U.S. \_\_\_, 114 S. Ct. 1578, 128 L. Ed. 2d 221 (1994); Bruno v. State, 574 So. 2d 76 (Fla.), cert. denied, 502 U.S. 834 (1991).

Clearly, the trial court's denial of this claim must be affirmed.

## ISSUE X

WHETHER THE TRIAL COURT FAILED TO CONDUCT AN INDEPENDENT EVALUATION OF THE MITIGATING EVIDENCE OFFERED BY MR. LAMBRIX, THEREBY DEPRIVING HIM OF HIS RIGHT TO AN INDIVIDUALIZED SENTENCING DETERMINATION.

The appellant's final claim alleges that the trial court failed to provide an individualized sentencing determination because the judge did not conduct an independent evaluation of the mitigating evidence. This claim is not subject to collateral review since it could have been raised in the initial direct appeal. Torres-Arboleda, 636 So. 2d at 1323. Furthermore, this Court's finding that the death sentences were properly imposed in this case again refutes the merits of this claim. Lambrix, 494 So. 2d at 1148.

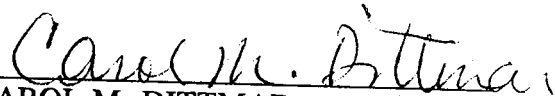
The sentencing order in this case expressly found that no mitigating circumstances existed (OR. 1354-55). To the extent that Lambrix is claiming that the order failed to comply with Campbell v. State, 571 So. 2d 415 (Fla. 1990), it must be noted that Campbell was not decided until six years after Lambrix was tried and sentenced to death, and is not to be applied retroactively. Gilliam v. State, 582 So. 2d 610, 612 (Fla. 1991). Therefore, any alleged noncompliance cannot be used at this time to attack the sentencing order rendered below.

CONCLUSION

Based on the foregoing arguments and citations of authority, the appellee respectfully requests that this Honorable Court affirm the trial court's denial of postconviction relief.

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. mail to Matthew Lawry, Volunteer Lawyers' Post-Conviction Defender Organization, Post Office Box 37039, Tallahassee, Florida, 32315, and Robert Josefsberg, Podhurst Orseck Josefsberg, City National Bank Building, 25 West Flagler Street, Suite 800, Miami, Florida, 33130, this 7<sup>th</sup> day of March, 1996.

  
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