IN THE SUPREME COURT OF FLORIDA

CASE NO.SC00-1748

AILEEN C. WUORNOS

Appellant,

v.

STATE OF FLORIDA

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT FOR PASCO COUNTY,
STATE OF FLORIDA**

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This proceeding involves the appeal of the circuit court's denial of Ms. Wuornos's motion for postconviction relief. The motion was brought pursuant to Fla. R. Crim. P. 3.850.

The following symbols will be used to designate references to the record in the instant case:

"R." -- The record on direct appeal to this Court.

"PC-R." -- The record on instant 3.850 appeal to this Court.

REQUEST FOR ORAL ARGUMENT

The resolution of the issues in this action will determine whether Ms. Wuornos lives or dies. This Court has allowed oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument would be appropriate in this case, given the seriousness of the claims involved and the fact that a life is at stake. Ms. Wuornos accordingly requests that this Court permit oral argument.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

STATEMENT OF THE CASE AND FACTS

The Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, entered the judgments of conviction and sentence under consideration on February 5, 1993. (R.- 98) Appellant had been charged by indictment of April 16, 1991 with one count of first-degree murder and one count of armed robbery. Appellant entered a plea of not guilty on May 5, 1991 (R . 10). Appellant pleaded guilty to the charges on June 22, 1992. Appellant waived her right to a jury trial on for the penalty phase (R - 30) and had the penalty phase of her trial conducted before Judge Wayne Cobb on January 25, 1993. Judge Cobb sentenced appellant to death with a sentencing memorandum attached on February 5, 1993 (R. 107).

On direct appeal, the Florida Supreme Court affirmed appellant's conviction and sentences. See Wuornos v. State, 676 So. 2d 996 (Fla. 1995).

On November 24, 1997, the office of Capital Collateral Representative filed an incomplete motion to vacate judgment with a special request for leave to amend. On February 12, 1998, the appellant through the above-referenced legal counsel, moved for an extension of time in which to file her final amended motion for post-conviction relief, with special request for leave to amend. In 1997, the Florida Legislature abolished

the then Office of The Capital Collateral representative and replaced it with three regional offices, The Capital Collateral Regional Counsel's (CCRC's). As a result of this legislation, appellant had lost her lead counsel, Mr.Todd Scher, because her case was transferred to the Middle Region, while Mr. Scher was transferred to the Southern Region. The appellant in the aforementioned motion stated that due to staffing problems in the newly created middle region office, where appellant's case was, she was not designated with counsel until January 1998. The Florida Supreme Court extended the time in which appellant had to file her final amended motion for post-conviction relief until June 25, 1999.

After a series of court sanctioned continuances, Ms Wuornos motion for postconviction relief was filed on January 5, 2000.(PC-R.-121) A Huff Hearing was held on this motion on April 12, 2000.(PC-R. 300) The motion was summarily denied without a hearing by Judge Wayne Cobb in an Order dated August 7,2000. (PC-R. 295) This appeal ensues.

SUMMARY OF ARGUMENT

Appellant requests that this Honorable Court vacate the lower court's summary denial of the motion and remand the cause for an evidentiary hearing accordingly on the claims argued herein.

1. The trial court order of summary denial failed to conclusively rebut facially sufficient allegations with appropriate references to or attachments of the record.

2. The trial court erred in failing to order an evidentiary hearing on the claim that appellant's judgment and conviction should be reversed due to the ineffective assistance of counsel on the part of her original attorney, the assistant public defender. He failed to advance appellant's defenses especially the right to speedy trail as provided by Fla. R. Crim P. 3.190.

3. The trial court erred in failing to order an evidentiary hearing on the claim that her successor attorney, Steven P. Glazier had a conflict of interest as contemplated by Cuyler v. State, 446 U.S. 335, 100 S Ct. 1078, 64 L. Ed. 2d in that he represented her adoptive mother and the appellant on the commercial appropriation of her story and represented her on her criminal charge as well. This conflict was never knowingly waived by the appellant. Mr. Glazer had a conflict between his role as Ms. Wuornos' criminal attorney and his role as a de facto media and literary agent for Ms. Wuornos, and Arlene Pralle a woman who came to adopt appellant after reading about her in the local newspaper. In such a role, Mr. Glazer accepted monetary compensation for arranging interviews during the pendency of this and other of appellant's related crimes.

4. The trial court erred in failing to order an evidentiary hearing on the claim that Mr. Glazer was ineffective in failing to prepare for client's case, demanded no discovery and failed to review with her the state's case against her. The aforementioned instances of ineffective assistance of counsel fell well below any standard of reasonable proficiency as contemplated by Strickland v. Washington, 466 U.S. 668 (1984) and resulted in prejudice thereby compromising the integrity of the judgments and sentences of death.

5. The trial court erred in failing to order an evidentiary hearing on the claim that Mr. Glazer was ineffective in that he failed to move for an evaluation until after appellant had entered her plea.

6. The trial court erred in failing to order an evidentiary hearing on the claim that a further ineffective assistance of counsel claim was the result of a type of breakdown in the adversarial process as defined by the United States Supreme Court in the case, United States v. Cronic, 466 U.S. 648 (1984). This breakdown occurred as a resulto of the frenzied media interest in appellant's case and the effect this had on the courts. The police and her lawyer.

7. The death penalty, as would be applied to appellant, is unconstitutionally vague in violation of appellant's rights

under the fifth, sixth, eighth and fourteenth amendments to the United States Constitution

8. The totality of all errors, judicial and by counsel, served to deprive appellant her rights under the United states Constitution.

9. The trial court erred in failing to order an evidentiary hearing on the claim that Appellant was denied her rights under Ake v. Oklahoma, 105 S. Ct. 1087 (1985) when her trial attorney failed to provide appropriate mental health experts to delve deeper into the tissue of her being incompetent.

10. The trial court erred in failing to order an evidentiary hearing on the claim that appellant was denied the effective assistance of counsel by the failure of Trial Counsel to call certain mitigation witnesses expert and non expert at the penalty phase.

11. The prospect of death by electrocution violates appellant's rights under the eighth and fourteenth amendments to the United States Constitution because such is cruel and unusual punishment.

12. The prospect of death by lethal injection violates the appellant's rights under the eighth and fourteenth amendments to the United States Constitution because such constitutes cruel and unusual punishment.

13. The trial court erred in failing to order an evidentiary hearing on the claim that appellant's trial attorney, Mr. Glazer, was ineffective in failing to uncover and present the evidence of a movie deal between three of the investigating law enforcement officials, a potential co-defendant, Ms. Tyria Moore, and Republic Pictures.

14. The trial court erred in failing to order an evidentiary hearing on the claim that appellant's trial attorney, Mr. Glazer was ineffective for failing to present to the sentencing tribunal evidence of the criminal background of one of the similar crimes victims Mr. Richard Mallory.

ISSUE I

THE TRIAL COURT ERRED TO FAILING TO CONDUCT AN EVIDENTIARY HEARING AND BY RENDERING A FACIALLY INSUFFICIENT ORDER WHICH FAILS TO CONCLUSIVELY REFUTE FACIALLY SUFFICIENT ALLEGATIONS

The trial court's order of denial is a five-page, amorphous rendition in essay form with no parenthetical or numerical designations. It is more critical than it is analytical. As A result any objective legal analysis is eclipsed by a pejorative and contemptuous tone.[1]

[1]Regrettably the trial court stoops to personally vilifying undersigned counsel by setting forth in a footnote a wholly vacuous inference of unethical conduct in the presentation of one most valid claim, i.e. that trial counsel was ineffective

As shall be pronounced in each of the issue, the trial court fails to sufficiently explain its reasons for summarily denying each claim without the benefit of a hearing. Consequently its order is far below any threshold of legal acceptability.

This court has expressed a strong preference for the conducting of evidentiary hearings in capital cases.

Appellant is entitled to an evidentiary hearing on a motion for postconviction relief unless (1) the motion files and records in the case conclusively shows that the prisoner is entitled to no relief or the (2) motion or particular claims are legally insufficient See Patton v. State, 2000 WL 1424526 (FLA) September 28, 2000.

As shall be elucidated with particularity on various of appellants claims, prima facie cases based upon legally valid claims were established by appellant in his motion for postconviction relief yet rejected by the trial court.

Likewise in Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000) the Supreme Court of Florida held that in addition to the unnecessary delay and litigation concerning the disclosure of public records, another major cause of delay in postconviction cases as the failure of the circuit courts to grant evidentiary hearings when they are required Id at page 32.

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for failing to have appellant evaluated ***prior*** to her plea.

The Supreme Court of Florida in its proposed amendments to Florida Rules of Criminal Procedure 3.851. 3.852 and 3.993 (no SC96646) (4/14/00) states:

> "Another important feature of our proposal is the provision addressing evidentiary hearings on initial postconviction motions. As previously noted we have identified the denial of evidentiary hearings as the cause of unwarranted delay and we believe that in most cases requiring an evidentiary hearing on initial postconviction motions will avoid that delay" Id at page 9.

See Mordenti v. State, 711 So.2d 30 (FLA. 1998)

This court is not required to accord particular deference to any legal conclusion of constitutional deficiency or prejudice under the Strickland test for evaluating the effectiveness of counsel. The alleged ineffectiveness of counsel is a mixed question of fact and law. While an appellate court might defer as a question of trial court factual determination on the issue of the omission constituting a deviation, the issue of whether such an omission resulted in prejudice is a de novo determination by the appellate court.

This court has stated such a principle in the decision of Stephens v. State, 748 So 2d 1028 (Fla. 2000). This court recognized the trial court's

superior vantage point in assessing the demeanor and believability of witnesses.

> Yet despite this deference to a trial court's findings a of fact, the appellate court's obligation to independently review mixed questions of fact and law of constitutional magnitude is also an extremely important appellate principle. This obligation stems from the appellate court's responsibilities to ensure that the law is applied uniformly in decisions based on similar facts and that the appellant's representation is within constitutionally acceptable parameters. That is especially critical because the Sixth Amendment right to assistance of counsel is predicated on the assumption that counsel "plays the role necessary to ensure that the trial is fair"
>
> Stephens at 1032

The United States Supreme Court addressed this identical issue in another context, as applied to the area of unreasonable searches and seizures.

> A policy of sweeping deference [to the trail court's legal conclusions] would permit "in the absence of any significant difference in the facts," "the Fourth Amendment's incidence to turn on whether turn on whether different trial judges draw general conclusions that the facts are insufficient to constitute probable cause." Such varied results would be inconsistent with the idea of a unitary system of law. This, if a matter of course. Would be unacceptable. In addition, the legal rules for probable cause and reasonable suspicion acquire content only through application. Independent review is therefore necessary if appellate courts are to maintain control of, and to

> clarify, the legal principles.
>
> Finally, de novo review tends to unify precedent. Ornelas v. United States, 517 U.S. 690, 116 S. Ct. 657, 134 L. Ed.2d 911 (1996)

Accordingly appellant to requests this court to order the conducting of an evidentiary hearing on her claims. Ms. Wuornos' claims involve issues requiring full and fair Rule 3.850 evidentiary resolution. See, e.g., Heiney v. Dugger, 558 So. 2d 398 (Fla. 1990); Mason v. State, 489 So. 2d 734 (Fla. 1986). A Rule 3.850 litigant is entitled to an evidentiary hearing unless "The motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; Lemon v. State, 498 So. 2d 923 (Fla. 1986). Under this standard, the allegations in Ms. Wuornos' Rule 3.850 motion clearly require an evidentiary hearing.

ISSUE II

> **THE TRIAL COURT ERRED IN SUMMARILY DENYING THE CLAIM THAT APPELLANT'S ORIGINAL ATTORNEY, THE OFFICE OF PUBLIC DEFENDER, WAS INEFFECTIVE IN ITS WAIVING OF SPEEDY TRIAL AND IN FAILING TO PREPARE DEFENSE FOR APPELLANT; MS. WUORNOS WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HER RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.**

Counsel's highest duty is the duty to investigate and prepare. Where, as here, counsel unreasonably fails to investigate and prepare, the appellant is denied a fair adversarial testing process

and the proceedings' results are rendered unreliable. See, e.g., Kimmelman v. Morrison, 477 U.S. 365, 384-88 (1986) (failure to request discovery based on mistaken belief state obliged to hand over evidence); Henderson v. Sargent, 926 F.2d 706 (8th Cir. 1991)(failure to conduct pretrial investigation was deficient performance); Chambers v. Armontrout, 907 F.2d 825, (8th Cir. 1990)(en banc) (failure to interview potential self-defense witness was ineffective assistance); Nixon v. Newsome, 888 F.2d 112 (11th Cir.989)(failure to have obtained transcript witness's testimony at co-appellant's trial was ineffective assistance); Code v. Montgomery, 799 F.2d 1481, 1483 (11th Cir. 1986) (failure to interview potential alibi witnesses).

Even if counsel provides effective assistance at trial in some areas, the appellant is entitled to relief if counsel renders ineffective assistance in his or her performance in other portions of the trial. Washington v. Watkins, 655 F.2d 1346, 1355, rehearing denied with opinion, 662 F.2d 1116 (5th Cir. 1981), cert. denied, 456 U.S. 949 (1982). See also Kimmelman v. Morrison, 106 S. Ct. 2574 (1986). Even a single error by counsel may be sufficient to warrant relief. Nelson v. Estelle, 626 F.2d 903, 906 (5th Cir. 1981)(counsel may be held to be ineffective due to single error where the basis of the error is of constitutional dimension); Nero v. Blackburn, 597 F.2d at 994 ("sometimes a single error is so substantial that it alone causes the attorney's assistance to fall below the Sixth Amendment

standard"); Strickland v. Washington; Kimmelman v. Morrison.

The Eighth Amendment recognizes the need for increased scrutiny in the review of capital verdicts and sentences. Beck v. Alabama, 477 U.S. 625 (1980). The United States Supreme Court noted, in the context of ineffective assistance of counsel, that the correct focus is on the fundamental fairness of the proceeding:

> A number of practical considerations are important for the application of the standards we have outlined. Most important, in adjudicating a claim of actual ineffectiveness of counsel, a court should keep in mind that the principles we have stated do not establish mechanical rules. Although those principles should guide the process of decision, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.

Strickland v. Washington, 466 U.S. 668, 696 (1984) (emphasis added). The evidence presented in this claim demonstrates that the result of Ms. Wuornos trial is unreliable.

On May 10, 1991, the court found appellant to be indigent and appointed the Office of Public Defender in and of the Sixth Judicial Circuit to represent her. On May 15, 1991, the assistant public defender filed on behalf of appellant plea of not guilty (R.10).

At a subsequent pretrial conference, which occurred on June 21,

1991, the appellant had not been transported to court but the defense and state counsel engaged in substantive discussions regarding the posture of the case in relation to the other of appellant's cases. Her public defender stated on this occasion:

> "I am not in a position to waive speedy trial. My client is not here. It is difficult for me to get up there to talk to her. She has cases pending on several Other jurisdictions. I received four envelopes of discovery yesterday and I haven't had chance to read it since last night. (R.182)

The matter on this date was reset for June 28, 1991. On that occasion, appellant again had not been transported and her public defender again stated his opposition at having to waive speedy trial. The matter was reset for July 12, 1991 (R-227)

On that date, speedy trial was inexplicably waived by the assistant public defender on behalf of his client. A written waiver is contained in the Pasco County Clerk of Court's file. The original counsel, the Office of Public Defender had the case from approximately May of 1991 until April of 1992.

In this time period the defense counsel did nothing beyond filing a standard demand for discovery without conducting a single discovery deposition nor did it attempt to finesse or move the case towards a disposition. He allowed for various of appellant's other cases take precedence.

The defense counsel failed to exploit a speedy trial problem

which inhered in state's case. It was clear in the summer of 1991, by virtue of the massive amount of police work and investigation occurring on other cases charged against the appellant that the State of Florida could not have brought appellant to trial within 180 days. The defense counsel misadvised appellant to waive her right to speedy trial.

Defense counsel gained no tactical advantage by waiving speedy trial. Defense counsel failed to fully and comprehensively review all evidence with Ms. Wuornos so that she could make an intelligent election of remedies in regards to speedy trial as well as to other issues.

Defense counsel failed to fully explore and develop the issue of self defense which appellant had on innumerable occasions stated to be her defense. Defense counsel failed to develop and pursue the fact that the victim of the shooting, Richard Carskaddon, was himself in possession of a gun.

Defense counsel failed to fully develop and purse the fact that the victim, Charles Carskaddon did have a criminal history background. Defense Counsel's aforementioned omissions in not counseling appellant on issues of discovery, speedy trial and in not exploring more fully her defenses fell well below the range of reasonable competence. The assistant public defender waived one of basic tactual advantage and then instead of attempting to zealously pursue his client's

best interests, did nothing in his client's case. He allowed it to wallow in neglect.

The trial court order fails to conclusively rebut the otherwise meritorious claim that appellant's first trial counsel failed to exploit a speedy trial problem in the state's case.

The failure of trial counsel to exploit a speedy trial violation is an allegation that has met the test of Strickland in the case of Williams v. State, 452 So. 2d 657 (Fla 2d DCA 1984) There as here the trial order did not have attached to it those portions of the record which conclusively showed that appellant was not entitled to relief, and the Second District Court of Appeal directed that either such an order be rendered or an evidentiary hearing be held.

There is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. This reasonable probability is sufficient to undermine confidence in the outcome.

A Rule 3.850 litigant is entitled to an evidentiary hearing unless "The motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; Lemon v. State, 498 So. 2d 923 (Fla. 1986). Under this standard, the allegations in Ms. Wuornos' Rule 3.850 motion clearly require an evidentiary hearing.

ISSUE III

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE CLAIM THAT A CONFLICT OF INTEREST BETWEEN HER SECOND TRIAL COUINSEL, MR. STEVEN GLAZER AND APPELLANT, WHICH SHE NEVER KNOWINGLY WAIVED, DENIED MS. WUORNOS HER RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.[2]

Attorney Steven Paul Glazer assumed representation of the appellant on April 6, 1992. Mr. Glazer had been retained subsequent to the conclusion of case Number 91-0257 in Volusia County, in which the appellant had been convicted of first- degree murder and sentenced to death. Mr. Glazer had also been retained to represent Ms Wuornos in other pending murder cases: Dixie County, Case Number 92-52 and; Citrus-Marion county, Case Numbers 91-112,91-304 &91-463. The Circuit Court in the Citrus-Marion postconviction action allowed leave to depose Mr. Glazer on that matter. His responses in that deposition apply to his overall representation of appellant on all of her cases and are therefore relevant to the action sub judice. A copy of his deposition testimony is attached to the denied postconviction motion and designated as exhibit A.

Mr. Glazer engaged in dual - and ultimately conflicting -

[2] A virtually identical claim in a postconviction motion challenging the judgments and sentences of death in Citrus Marion County cases was granted an evidentiary hearing.

capacities as an attorney who represented the appellant on five counts of first-degree murder for which the State of Florida was seeking the death penalty and as an attorney who represented appellant and her adoptive mother, Arleen Pralle, in ongoing negotiations with media, movie and televison contracts for appearances and commercial rights to appellant's story.

It was Ms. Arleen Pralle who was Mr. Glazer's conduit to the appellant. Ms. Pralle, an Ocala, Florida horse breeder, read of appellant's plight and decided out of an avowed religious conviction to adopt her. Pralle retained Mr. Glazer to perform the adoption. Glazer's role as Ms. Pralle's attorney for the adoption soon evolved into serving as her spokesman to the increasing number of media queries which arose as a result for her new status as Aileen Wuornos' legal mother. From there Mr. Glazer began to discuss with Ms Wuornos her ongoing criminal case, which at that point was at the stage of the Volusia County case where she was being represented by the Office of Public Defender. Eventually Mr. Glazer became her attorney on the criminal cases. As is depicted in the documentary movie, "Aileen Wuornos, The Selling of a Serial Killer Mr. Glazer, while representing appellant on her criminal charges, was actively seeking and charging charged ten-thousand dollars ($10,000.00) for an interview with either appellant or her adoptive-mother.

Mr. Glazer's loose, unwritten and apparently informal agreement

with appellant as to his representation of her on the criminal charges did not call for the remittance of a fee.

Testified Mr. Glazer as to this issue:

> "I was never retained money-wise or anything. What she did was say - - after the Volusia County case, she asked me to come down and see her and she said she wanted to fire her public defender"(page PC-R. 232)
>
> "My agreement was to do it for free, pro bono" (PC-R. 234)

While Mr. Glazer apparently received no money for his representation of the appellant on her criminal matters, he did actively pursue and ultimately receive money from media interests for brokering interviews and appearances relative to his client's story.

Mr. Glazer acted as an agent or spokesman for the appellant in negotiations with: British documentary film maker Nicholas Broomfield, producer of "The Selling of a Serial Killer":
The Aileen Wuornos Story; Television show producer and host Montel Williams; Television show producer and host Geraldo Rivera.

Mr. Glazer thus had a pecuniary interest in an enterprise which directly conflicted with his ethical duties and obligations to the appellant as her criminal defense attorney. This conflict was rendered especially egregious by virtue of the fact that Ms. Glazer endeavored for arrangements where his client and those close to her would actually speak about the cases he was representing her on during their actual

pendency.

Mr. Glazer has acknowledged receiving two-thousand and five-hundred dollars, ($2,500.00) for his role in procuring an interview with Ms. Wuornos by Nicholas Broomfield. (PC-R. 243)

In the Broomfield documentary, Mr. Glazer is seen requesting ten-thousand dollars, ($10,000) before allowing him (Ms. Wuornos Broomfield) to speak to either his client, the appellant, or her mother, Ms. Pralle. Mr. Glazer is also seen receiving cash from Mr. Broomfield, joking about betting it on a horse race, delivering this cash to Ms. Pralle and then finalizing his own delivery time with Mr. Broomfield.

Ms. Pralle, as has been discovered in postconviction investigation, has asserted that Mr. Glazer - in addition - to his role as Ms. Wuornos' attorney- had acted as an agent for both herself and the appellant in negotiations with media interests.

Ms. Pralle stated that Mr. Glazer actively represented her in negotiations with author Delores Kennedy who ultimately wrote the book "On a Killing Day" chronicling the case of the appellant.

Ms. Pralle testified - and it is objectively apparent from other sources such as the Broomfield documentary– - - that Mr. Glazer was quite active in the interview and appearance brokering while the Citrus Marion case, CC 91-112 and the Dixie County cases 91-52 as well as this the Pasco County case were all pending. In this respect, the actions of

the initial attorney for the appellant was per se ineffective in that he was engaged in a clear ethical conflict.

As such, this conflict was actual as opposed to potential and as a matter of law this court does not need to determine whether the shortcoming affected the outcome of the proceeding. See Cuyler v. State, 446 U.S. 335, 100 S Ct. 1078, 64 L. Ed. 2d; Herring v. State, 580 So. 2d 1135 (Fla. 1991).

A Rule 3.850 litigant is entitled to an evidentiary hearing unless "The motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; Lemon v. State, 498 So. 2d 923 (Fla. 1986). Under this standard, the allegations in Ms. Wuornos' Rule 3.850 motion clearly require an evidentiary hearing.

Because his ethical conflict resulted in the diminution and compromise of Mr. Glazer's efforts on her behalf in the criminal case, the conflict was actual as opposed to potential, and therefore, as a matter of law, no actual prejudice is required to be proven by appellant.

This conflict constituted the ineffective assistance of counsel and inferred a reasonable probability that but for counsel's unprofessional errors the result would have been different.

ISSUE IV

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE MERITORIOUS CLAIM THAT

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FALLING TO PROPERLY AND THOROUGHLY REVIEW ALL STATE DISCOVERY BOTH INDIVIDUALLY AND WITH THE APPELLANT SO AS TO RENDER ANY SUBSEQUENT PLEAS AND WAIVERS UNKNOWING, UNINTELLIGENT AND INVOLUNTARY. IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE SIXTH, EIGHT AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

On April 6, 1992, Mr. Glazer filed a notice of appearance on behalf of the appellant. On June 22, 1992, Glazer filed a "petition" to enter a plea of guilty. (R. 28)

In this two-month period between Mr. Glazer's notice of appearance and the filing of the no contest plea, he did nothing to actually prepare or to indicate to the state that he was preparing to go to trial.

Mr. Glazer's representation of appellant was unquestionably well below a standard of reasonable competence. In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court held that counsel has "a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." 466 U.S. at 668 (citation omitted). Strickland requires a appellant to plead and demonstrate: 1.) deficient attorney performance, and 2.) prejudice.

"One of the primary duties defense counsel owes to his client is the duty to prepare himself adequately prior to trial." Magill v. Dugger, 824 F.2d 879, 886 (11th Cir. 1987); "pretrial preparation, principally because it provides a basis upon which most of the defense

case must rest, is, perhaps, the most critical stage of a lawyer's preparation." House v. Balkcom, 725 F.2d 608, 618 (11th Cir.), cert. denied, 469 U.S. 870 (1984); Weidner v. Wainwright, 708 F.2d 614, 616 (11th Cir. 1983). As stated in Strickland, an attorney has a duty to undertake reasonable investigation or "to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691.

Mr. Glazer undertook representation of a client in a matter in which he was not fully qualified. Prior to his representation of Ms. Wuornos he had been a practicing lawyer for merely two years and in that time had never represented any client in either a homicide or a capital case.

In his aforementioned deposition testimony given by Mr. Glazer on November 30, 1999, he stated that the appellant contacted him to seek his counsel and presumably inquire as to the hiring of him to represent her in the pending matter. He made no efforts to refer this case to more seasoned and experienced counsel; rather he took the case under the guise of helping Ms Wuornos expedite the imposition of the death penalty.

Mr. Glazer had no formal written agreement for the retention of his professional services in the matter. While not a technical requirement of the canons of professional ethics it would certainly seem within the bound of professional propriety that in a case of this particular magnitude.

Mr. Glazer had stated that his role was to assist the appellant in

being sentenced to death in her remaining cases. i.e. this case 91-1232, as well as the cases in Dixie County 92-52 And Citrus Marion County 91-112.

On this point Mr. Glazer stated in the course of the aforementioned testimony:

> "We talked about it. I don't remember what we actually said to each other, but the results was that she wanted to plead guilty and get it over with. She said, how many times can they kill me? And she said - - we talked about it, well, when we go to court on - - if that is the date that you want to fire, get rid of the public defender and I would enter a notice of appearance on that day. And that is what happened on that day"
> (PC-R. 233)

Although this quote actually referred to Mr. Glazer's representation in the Citrus-Marion cases, it was the adopted philosophy of representation in the Dixie County case and in the Pasco county case as well. Mr. Glazer never sought to obtain the previously obtained discovery of the public defender who had represented his client prior to his notice of appearance.

A period of two months lapsed between Mr. Glazer's notice of appearance and his filing of a guilty plea (R. 192-96) Mr. Glazer by his own admission never reviewed the bulk of discovery materials, i.e. police reports, autopsy reports and witness statements made and prepared by the state in the prosecution of the case against his client.

Mr. Glazer, by his own admission, never reviewed any of the

aforementioned materials with his client. He further testified in his deposition testimony as follows:

> "If Aileen Wuornos wanted guilt phase, I had a couple of people that I knew who were very learned in that particular area. And if she wanted to go to a guilt phase, I would sit second chair while Craig- - - I talked to Craig. Eventually Craig said no, I don't want to do it. There is no money in it. And he wouldn't do it. But, at this point, I was discussing having DeThomasis is D-E-T-H-O-M-A-S-I-S. Do the trial and I would sit second.
>
> Q. Do the penalty phase you mean?
>
> A. I would do the penalty phase and he was– - - he has all the experience in the world to do a guilt phase. And that's - - what I said to the Judge.
>
> Q. So it is actually your testimony that at one point you had contemplated actually not facilitating Aileen's wish and actually going to trial on these cases?
>
> A. No somebody asked me- - I think maybe the Judge or somebody asked me, are you sure you want to waive. I don't recall but I think somebody said, if you go through the guilt phase, could you do it? And the answer is no **I was not competent to go through a guilt phase. But if that was going to be done I talked to a couple of friends of mine in Gainesville.**
>
> Q. But you were competent to go through, according to your testimony, a penalty phase?
>
> A. I believe I was competent to do a penalty phase because for two or three years I had been doing mitigation. You know how you do mitigation in all your cases via VOP'S, violation of probation.....
>
> (PC-R.- 248-249)

Because of trial counsel's omissions, defendant was denied the assistance of effective counsel, which specifically in this case called for more thoroughly and completely reviewing all of her options and in counseling her and her seeming wishes to "want to get it over with" . Defense attorney failed to actually counsel defendant in light of what the actual evidence was against her and what her legal rights were with respect to that.

The suitability and qualification's of Counsel's professional background raised serious questions as to his likelihood of meeting such a standard. Moreover defense counsel's conduct of defendant's legal defense and strategy fell below the wide range of reasonable professional assistance.

There is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different; therefore confidence in the efficacy and integrity of the trial's outcome is accordingly undermined.

ISSUE V

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE MERITORIOUS CLAIM THAT TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO MOVE FOR AN EVALUATION OF APPELLANT PRIOR TO AND DURING TRIAL SO AS TO DETERMINE APPELLANT'S ABILITY TO UNDERSTAND AND APPRECIATE THE NATURE OF THE PROCEEDINGS AGAINST HER AND TO ASSIST HER LAWYERS IN THE PRESENTATION OF HER CASE. IN VIOLATION OF THE EIGHTH AMENDMENT.

Appellant's trial counsel failed to move for the appointment of a panel of experts until **after** his client had entered a plea of no contest. Some question obviously existed as to the competence of the appellant to proceed.

On July 14, 1992, defense counsel presented a letter from Dr. Harry Krop, who had been appointed to provide confidential advice to the defense. Dr. Krop stated that he had re-examined Wuornos on July 10, 1992, and found that she was delusional, perceived her lawyer as part of a conspiracy, labored under a delusional disorder prosecutory type, lacked the ability to rationally participate in plea bargaining without significant impairment and was incompetent to proceed. This letter is referenced in the denied motion as Exhibit b. Defense counsel did ***not*** have appellant evaluated ***prior*** to his facilitation of her guilty plea. Defense counsel explained that he requested the re-evaluation because he had seen a "particularly bizarre" change in Wuornos's behavior over the last 30 days. Counsel questioned whether Wuornos had been competent

to waive her presence. (R. 242) Counsel asked the court to have another expert evaluate Wuornos. (R. 243) The court granted the request and entered orders appointing Dr. Donald DelBeato and Dr. Joel Epstein to evaluate Wuornos's competence to stand trial. (R. 56-58, 61-62, 243-48)

As a result, appellant pleaded guilty to first degree murder where the State of Florida had announced its intention to seek the death penalty with the issue of her competency never addressed or adjudicated.

Appellant's course of conduct throughout the previous Volusia County trial, which Glazer claimed to have watched, strongly raised the possibility that she was neither capable of assisting in her own defense nor did she apparently grasp the nature of the proceedings against her.

In several different instances, many of which are referenced in the motion (PC-R. 145-148) appellant exhibited behavior during the course of her Volusia County Trial that raised a question as to her competency to stand trial. In the Pasco Case, the one sub judice, the appellant displayed similar behavior in the form of a rambling, impertinent and often profane discourse to Judge Lynne Tepper, who accepted her guilty plea in the (R. 190) This further evidenced a serious question as to defendant's mental state.

The aforementioned conduct should have alerted defense counsel as to the possibility that appellant was neither able to appreciate the nature of the proceedings against nor able to conform her behavior to

an appropriate mode nor to meaningfully or functionally assist her attorney in the presentation of her defense.

Trial counsel's omissions in this respect were so conspicuous that the Florida Supreme Court, in affirming her conviction on direct appeal, upheld her plea as voluntary and intelligent based on the completely superfluous and inappropriate remarks made by Attorney Glazer at her plea colloquy in which he enthusiastically vouched for his client's competence. See State v. Wuornos, 676 So. 2d 966 (Fla 1995).

Evidence that certain circumstances exist which may raise the question of a defendant's competence supports the conclusion that an evidentiary hearing is required. Groover v. State, 489 So 2d 15 (Florida 1986) A nunc pro tunc competency evaluation was required for a murder defendant who had brought a 3.850 motion where extensive history of evidence of his behavior and background was not uncovered by defense counsel and not evaluated by psychiatrists prior to trial, and accordingly the summary denial of this claim was reversed for an evidentiary hearing in Mason v. State, 489 So. 2d 734 (Fla. 1986)

It was outside the range of reasonably competent professional assistance not to have had the defendant initially evaluated for her competency before she tendered her plea. The results of these omissions in light of the consistently bizarre and inexplicable courtroom behavior of defendant in the course of bother her Volusia County trial and her comments and conduct during her pretrial appearances in the Pasco County

case, at bar, strongly prejudiced the defendant's cause and undermined the reliability of the result.

ISSUE VI

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE MERITORIOUS CLAIM THAT A BREAKDOWN IN THE ADVERSARY SYSTEM OCCURRED, CONSTITUTING, PER SE, THE INEFFECTIVE ASSISTANCE OF COUNSEL PURSUANT TO UNITED STATES V. CRONIC, 466 U.S. 648 (1984) AND DENIED MS. WUORNOS HER RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS AS WELL AS HER RIGHTS TO A RELIABLE ADVERSARIAL TESTING OF THE STATE'S CASE.

A. Media effects on the case

The investigation, arrest, representation and prosecution of appellant Aileen C. Wuornos occurred in an atmosphere of massive local and national electronic media coverage.

During the pendency of appellants trial, four of the law-enforcement personnel involved in the investigation of Ms. Wuornos case, Marion County Sheriff Captain Stephen Binegar, Marion County Sheriff's Sergeant Bruce Munster, Marion County Sheriff's Detective Brian Jarvis and Marion County Sheriff's Major Dan Henry were actively negotiating with the representatives from the entertainment industry for a movie production of appellants story while contemporaneously investigating and processing her case.

As early as November of 1990, prior to the appellant's identification as a suspect in the series of homicides in which she was

convicted, State Attorney, Brad King conducted an internal investigation of the Marion County Sheriff's Office which revealed that Captain Stephen Binegar was contacted by various entertainment representatives about the possibility of movies or books being produced about the murders when their investigation was through. These negotiations predated the actual arrest of the appellant and coincided with the work of law enforcement in their pursuit of appellant.

After the arrest of appellant, Binegar, Munster, and Dan Henry retained a Marion County attorney Robert Bradshaw to receive and review any and all such offers. Some of the callers to Attorney Bradshaw inquired as to the possibility of contracting potential co-defendant Tyria Moore.

State Attorney King's report found that on January 29, 1991, there occurred a meeting between Bradshaw and Munster and Binegar concerning the movie offers. The report found that on January 30, 1991, Tyria Moore contacted Bradshaw and she asked him to represent her in negotiations with entertainment industry representatives.

According to the report, Tyria Moore had stated that Sergeant Munster had suggested that she join the three deputies, already being represented by Attorney Armstrong, rather than pursue her deals individually. He explained to her that each of them would make more money collectively than they could individually. Munster acknowledged to the state attorney investigators that he had referred her to

Bradshaw but did not recall the exact details of the discussion.

Upon receipt from Republic pictures of a concrete offer, Henry and Binegar went to the Sheriff to inform him of the offer. The sheriff's position was that any movie proceeds were to go directly into a trust fund for crime victims. The deputies were to later decide whether or not the payment for personal services would be deducted by them.

The proposed payment scheme was as follows: $2,500.00 -- $5,000.00 for the initial signing; the total amount of $55,000.00 -- and $60,000.00 upon the movies actual production and an additional $45,000.00 -- $60,000.00 in the deputies actually rendered personal services to the scripts production.

On Feb. 16th, 1991, according to the state attorney investigation, it was decided that due to the repercussions of the movie negotiations on the prosecution of the appellant, the deputies would abandon their efforts.

On March 19 1991, Tyria Moore discharged Attorney Bradshaw from her further representation. The conclusion of the state attorney investigation into this issue, published in August of 1991, was that no acknowledged movie production was underway at that time. In subsequent deposition testimony given to appellants trial attorneys, all three law enforcement personnel - Munster, Henry and Binegar - similarly maintained, as they had in their internal affairs investigation, that aside from initial meetings and consideration the movie production

project went no further.

Postconviction investigation, which would have been presented at an evidentiary hearing, uncovered an acknowledgment by Sergeant Munster that State witness Tyria Moore was still considered a suspect at the time of her initial questioning and that she was found to be in possession of some of the murder victim's property.

After the conclusion of appellant's cases in Volusia and Citrus-Marion, there occurred a second FDLE investigation which focused on the deposition testimony given by Moore, Munster, Henry and Binegar pursuant to a civil lawsuit filed by Jacquelyn Giroux against Aileen Wuornos. Ms. Giroux sued on the theory that the movie rights she had contractually acquired were interfered with by a deal between Republic Pictures, Ms. Wuornos, Sergeant Munster, Major Henry, Captain Binegar and Tyria Moore.

As a result of this second investigation, Deputy Dan Henry was forced to resign and Sergeant Munster and Captain Binegar were demoted.

The reason for these demotions stemmed from conversation between Major Henry and Sergeant Munster which was tape recorded by the latter and which suggested an attempt by the former to influence the latter to give less-than-candid testimony.

The clear inference of the tape recorded conversation between Major Henry and Sergeant Munster was that the deposition testimony of Captain Binegar, Sergeant Munster and Major Henry given to

the Appellant's trial counsel in 1992 prior to the commencement of trial had been less that candid.

The Pasco County case was affected by this development in the respect that it, like all of the other murders, had Tyria Moore as an initial suspect along with appellant. She was in possession of some of the murder victim's property and was considered a suspect by Detectives Binegar and Munster at the time they initially questioned her. She also expressed remorse to them for the killings for not coming forward sooner.

This was clearly a troubling scenario which clearly suggested a breakdown in the adversarial process within the meaning of Cronic.

B. Performance of Trial Attorney Steven P. Glazer

The very performance, conduct and competence of defense counsel Steven Glazer firmly evidence a breakdown in the adversarial process. By allowing Mr. Glazer to continue in his capacity as defense counsel, the court created a scenario similar to facts of Cronic where the trial judge appointed a young real-estate lawyer to represent a appellant's complex criminal fraud case and gave him twenty five days.

An examination of Mr. Glazer's performance on appellant's behalf includes, but is not limited to, the following examples at egregiously ineffective assistance of counsel.

Mr. Glazer, by his own admission, took the case only to plead his client to death which - according to him - was her wish.

On this issue Mr. Glazer stated :

> She said, do it right. She said, I don't want this coming back on appeal. I want it – I don't want to win any appeals. I want it over with. So I was doing like I think I told you once before, anti-lawyering. I learned everything I could about why – read every Florida Weekly as they were coming out. I did all kinds of research on what makes a case come back, and then tried to avoid those problems by, like I said, at that point putting on the penalty phase and really trying to save her life, because I thought that if I didn't do that the case might come back years later and she would have to go through it again.(DT p. 34 L 1-17,P. 35 L1-2)

Trial counsel accepted representation in these terms without consulting with or enlisting the advice or counsel of a lawyer more experienced in capital litigation. He did not advise appellant on the case against her. He neither demanded nor received any discovery. He therefore failed to review same with appellant rendering any subsequent plea or waiver unknowing.

Mr. Glazer's claim that all Ms. Wuornos hired him solely to expedite the legal process so that she could be quickly quickly is disingenuous and unsupported. If such had been the aim, why did Mr. Glazer initiate the notice of appeal upon entry of the judgment and sentence of death? Why did Mr. Glazer , pursuant to his client wishes, simply waive all appeals which clearly was an option. The reason is likely because this oft stated goal of the client was not an abiding one but one which rather vacillated. Accordingly Mr. Glazer's failure

to counsel or advise her any further as to this supposed aim renders his omission in this respect all the more egregious.

Trial counsel lacked the background to undertake a case of this magnitude. When questioned further on this, Mr. Glazer indicated as follows:

> Q.Otherwise, Mr. Glazer, within your staff support of your law office what kind of team did you have assembled to assist in the representation of Ms. Wuornos?
> A. For the penalty phase?
>
> Q.(Nodding head affirmatively.)
> A. Absolutely none.
>
> Q. You had no investigators?
> A. Nothing.
>
> Q. No paralegals?
> A. Nothing.
>
> Q. No attorneys?
>
> A. Nothing.
>
> Q. No law clerks.
>
> A. Nothing.
>
> Q, What discussions, if any, did you have with your predecessor counsel, Ms. Jenkins, Billy Nolas and Billy Miller regarding Ms. Wuornos' cases as they came to learn?
>
> A. Nothing They hated me. They wouldn't talk to me. I mean, I am sure if I asked them for help or something, they would have, by duty. They're very good people. But after what happened when I entered my notice of appearance they just like – they spit on my grave.

> Q. Mr. Glazer, what consultations and/or conferences if any, did you conduct with more experienced professional colleagues in the capital field concerning the litigation of a capital case?
>
> A. The whole case?
>
> Q. All three of them. What other colleagues did you talk to?
>
> A. Besides – well it was like, you know, a round table on a Friday afternoon. I mean, all the lawyers go to a bar in Gainesville and sit around. I don't know if it came up or not but in general the anser is, I would say no one. (PC-R. 249-251)

Mr. Glazer ceded a major issue to the state that of guilt. By his own admission, as reflected in the above passages, he was not competent to conduct guilt phase. He therefore wielded no leverage on behalf of his client.

> Q. Now, you have also testified Mr. Glazer you would have love to have spared her the death sentence, personally, you have loved that.
>
> A. Say that again.
>
> Q. To broadcast from day one, we are not going to trial, we are not going to trial, what kind of leverage does that give your client.
>
> A. You mean, for possible negotiations?
>
> Q. Possibly.
>
> A. Again, it's a what if question, I think.
>
> Q. Did you ever pick the phone up and contact the various state attorneys to determine the resoluteness about seeking the death penalty?

> A. No. I was aware that Trish and Billy were trying to negotiate a deal with all the counties. I know that they spoke to Marion County Office. I don't know if Dave Eddy was the prosecutor. Whoever the prosecutor was, they wanted the death penalty. But I was aware that Ms. Jenkins was in contact with all the counties to try to resolve them all. But I know that for a fact that Pasco said, no. Pasco was seeking the death penalty no matter what. It was my impression that Marion was seeking the death penalty, as well. Dixie might very well have said, let's spare us.
>
> (PC-R. 271)

In the course of the plea colloquy, Glazer, despite his many professions that appellant was competent to decide all of her waivers, openly speculated that she could have been intoxicated at the time of the shooting.(R. 195)

In the course of his representation of appellant, trial counsel consistently vacillated between wanting to assist his client in expediting her execution and in wanting to put on an aggressive case for her being spared the death penalty.

On the date of appellant's plea entry, trial counsel in response to a question from the Judge asserted that his client was competent adding that otherwise "I would not be sitting next to her."(R. 202) Yet at the time of that statement no such examination of appellant had occurred for that case.

Trial Counsel was categorically ineffective on behalf of appellant. She, in effect, had no attorney.

Trial counsel had a clear ethical conflict between his role as

appellant's criminal defense lawyer and as the de-facto agent for she and her mother in-law in the commercial appropriation of her story.

In the movie "The Selling of a Serial Killer: the Aileen Wuornos Story," trial counsel is seen smoking marijuana on the way to see appellant at Broward Correctional Institution. Attorney Glazer is quoted by the film's producer as saying that the trip from his law office is a "seven joint ride". Indeed trial counsel has admitted to marijuana use during his representation of appellant and admitted that the depiction of him smoking marijuana on film was accurate (PC-R. 276)

Although trial counsel claims such use to have been recreational, documentarian Nicholas Broomfield who produced the aforementioned work and who spent considerable time in the company of Mr. Glazer would have testified at an evidentiary hearing that Mr. Glazer's use of this drug at that time was habitual.

Trial counsel further testified that at the time of his drug use he was also on medication to combat a cardiac condition which had necessitated an angioplasty the preceding November. These additional drugs were in the nature of blood pressure medicine, a blood thinner and a calcium blocker. (PC-R. 277)

Also in the Broomfield documentary, trial counsel is depicted comically bantering that his advice to his client would be, quoting a Woody Allen Movie, "don't sit down."

The language of Cronic created an exception to Strickland . The Supreme Court stated:

> Moreover because we presume that the lawyer is competent to provide the guiding hand that the defendant needs, see Michel v. Louisiana, 350 U.S. 91, 100-101 (1955) the burden rests on the accused to demonstrate a constitutional violation. There are, however, circumstances so likely to prejudice the accused that the cost of litigating their effect in a particular case is justified.
>
> Most obviously of course, is the complete denial of counsel. The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial is unfair if the accused is denied counsel at a critical stage of his trial. Similarly if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. **No specific showing of prejudice was required in Davis v. Alaska, 415 U.S. 308 (1974) because the petitioner had been "denied the right of effective cross examination" which "would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.'"**
> Id., at 318 (citing Smith v. Illinois 390 U.S. 129, 131 (1968) and Brookhart v. Janis, 384 U.S. 1,3 (1966). Cronic 466 U.S. at 658-59 (emphasis added)

The cumulative effects of the aforementioned instances created external constraints upon the effectiveness of trial counsel because of a breakdown in the adversarial process.

A Rule 3.850 litigant is entitled to an evidentiary hearing unless

"The motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; Lemon v. State, 498 So. 2d 923 (Fla. 1986). Under this standard, the allegations in Ms. Wuornos' Rule 3.850 motion clearly require an evidentiary hearing.

There is a reasonable probability that but for these defects in the trial the outcome would have been different. According to the aforementioned language, prejudice must be presumed, confidence in the integrity of the verdict is therefore undermined and a new trial is warranted. Certainly, at the very least, an evidentiary hearing is warranted on this claim.

ISSUE VII

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE CLAIM THAT MS. WUORNOS WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT PHASE OF HER TRIAL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO ADEQUATELY INVESTIGATE AND PRESENT THE PAST OF RICHARD MALLORY, WHO WAS A VICTIM IN ONE OF HE SIMILAR FACT CASES WHICH THE COURT CONSIDERED DURING PENALTY PHASE

Records obtained from the Patuxent Institution, a maximum security correctional facility which provides remediation to sexual offenders reflect that from 1958 to 1962, Richard Charles Mallory, the victim in one of the crimes considered in the penalty phase as an aggravator the instant action, was committed for treatment and

observation on account of a criminal charge of assault with intent to rape. These records further reflect an eight year of overall treatment under the institution's guise. (PC-R. 210)

The knowledge of Mallory's past was well known to the public and to Attorney Glazer at the time of his penalty phase hearing which occurred in February of 1993. Its disclosure was in the early part of 1992 during the commencement of the Volusia County trial. and was easily discoverable to Glazer had he consulted with his predecessor counsel. In fact On September 9, 1992, Mr. Glazer moved for a continuance of the penalty phase hearing. The reason stated for the continuance related to Attorney Glazer's recent discovery of the fact that the victim in appellant's Volusia County case CC 91-0257, Richard Mallory, had a past as a sexual offender.

Certainly the document regarding Mallory's stay at Patuxent would have, in all reasonable probability, affected the outcome of the proceeding. Therefore the omission compromised and undermined the integrity of the verdict.

Such documentation would specifically reflect that Richard C. Mallory was originally confined in the Maryland Penitentiary for a period of four years on a charge of Housebreaking with intent to rape, which occurred in Anne Arundel County, Maryland.On December 2, 1957, Mallory had entered a plea of insanity.

On January 30, 1958, the court ordered that Mr. Mallory be

examined. On July 21, 1958, Mr. Mallory was committed to the Patuxent Institution for confinement as a "defective delinquent" for an indeterminate period of time without maximum or minimum limits until released by further order of the court. (PC-R. 211)

By a court order dated April 16, 1968, Mr. Mallory was relieved of the status of "defective delinquent" and apparently completed his treatment at the Patuxent Institution. A mental examination at the time of Mr. Mallory's confinement found that he possessed an extremely strong sex urge along with a number of neurotic manifestations with especially obsessive compulsive elements.

The diagnostic impression of Mr. Mallory was personality pattern disturbance and schizoid personality. The examination, which was conducted by Dr. Harold M. Boselow at the request of the court and which led to his commitment, revealed that because of his emotional disturbance and poor control of sexual impulses, Mallory could present a danger to his environment in the future.

While at Patuxent, Mr. Mallory initially exhibited argumentative behavior and engaged in a number of fights before adjusting to institutional life.

Mr. Glazer was removed from his in-house prison job as a hospital clerk on August 22, 1960, because of his having made a molesting gesture towards the chart nurse with sexual intent.Mr. Glazer escaped from the institution on March 14, 1961, and stole a car to facilitate such

escape.

At that time, it was observed of Mr. Glazer that he possessed strong sociopathic trends which were very close to his service and that his controls against them were weak and porous. Further witnesses, neither discovered nor presented by trial counsel, existed as to Mr. Glazer's background which included a penchant for topless bars, prostitution and pornography.

Among these witnesses were and are;

A. Kimberly Guy: Ms. Guy, a dancer at the 2001 Odyssey nude dancing establishment in Tampa, Florida made statements in the past which suggest that in addition to having an affinity for prostitution and sex, Mr. Glazer, was equally interested in masochistic sex and frequently traveled with a pair of handcuffs in his briefcase.

b. Chastity Marcus: Ms. Marcus, similarly a dancer in the adult entertainment industry, also made statements about Mr. Glazer's crippling obsession with sex. She stated that Mallory would frequently exchange sexual favors for electronic equipment back in his shop.

A Rule 3.850 litigant is entitled to an evidentiary hearing unless "The motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; Lemon v. State, 498 So. 2d 923 (Fla. 1986). Under this standard, the allegations in Ms. Wuornos' Rule 3.850 motion clearly require an

evidentiary hearing.

There is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different; therefore confidence in the efficacy and integrity of the trial's outcome is accordingly undermined.

ISSUE VIII

MS. WUORNOS' TRIAL WAS FRAUGHT WITH PROCEDURAL AND SUBSTANTIVE ERRORS WHICH CANNOT BE HARMLESS WHEN VIEWED AS A WHOLE, SINCE THE COMBINATION OF ERRORS DEPRIVED HER OF THE FUNDAMENTALLY FAIR TRIAL GUARANTEED UNDER THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

Ms. Wuornos contends that she did not receive the fundamentally fair trial to which she was entitled under the Eighth and Fourteenth Amendments. See Heath v. Jones, 941 F.2d 1126 (11th Cir. 1991); Derden v. McNeel, 938 F.2d 605 (5th Cir. 1991). It is Ms. Wuornos's contention that the process itself failed her. It failed because the sheer number and types of errors involved in her trial, when considered as a whole, virtually dictated the sentence that she would receive. State v. Gunsby, 670 So. 2d 920 (Fla. 1996).

The flaws in the system which sentenced Ms. Wuornos to death are many. They have been pointed out throughout not only this pleading, but also in Ms. Wuornos's direct appeal; and while there are means for addressing each individual error, the fact remains that addressing these errors on an individual basis will not afford adequate safeguards

against an improperly imposed death sentence -- safeguards which are required by the Constitution. These errors cannot be harmless. The results of the trial and sentencing are not reliable. Rule 3.850 relief must issue.

ISSUE IX

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE MERITORIOUS CLAIM THAT MS. WUORNOS WAS DENIED HER RIGHTS UNDER AKE V. OKLAHOMA WHEN COUNSEL FAILED TO OBTAIN AN ADEQUATE MENTAL HEALTH EVALUATION AND FAILED TO PROVIDE THE NECESSARY BACKGROUND INFORMATION TO THE MENTAL HEALTH CONSULTANT IN VIOLATION OF MS. WUORNOS' RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AS WELL AS HER RIGHTS UNDER THE FIFTH, SIXTH, AND EIGHTH AMENDMENTS.

A criminal appellant is entitled to expert psychiatric assistance when the State makes his or her mental state relevant to the proceeding. Ake v. Oklahoma, 105 S. Ct. 1087 (1985). What is required is an "adequate psychiatric evaluation of [the appellant's] state of mind." Blake v. Kemp, 758 F.2d 523, 529 (11th Cir. 1985). In this regard, there exists a "particularly critical interrelation between expert psychiatric assistance and minimally effective representation of counsel." United States v. Fessel, 531 F.2d 1278, 1279 (5th Cir. 1979). The expert also has the responsibility to obtain and properly evaluate and consider the client's mental health background. Mason, 489 So. 2d 734 (1986) at 736-37.

Generally accepted mental health principles require that an accurate medical and social history be obtained "because it is often only from the details in the history" that organic disease or major mental illness may be differentiated from a personality disorder. R. Strub & F. Black, Organic Brain Syndrome, 42 (1981). This historical data must be obtained not only from the patient but from sources independent of the patient.

In Ms. Wuornos's case, counsel failed to provide his client with "a competent psychiatrist . . . [to] conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense." Ake, 105 S. Ct. at 1096 (1985).

Both the expert and trial counsel have a duty to perform an adequate background investigation. When such an investigation is not conducted, due process is violated. The judge and jury are deprived of the facts which are necessary to make a reasoned finding. Information which was needed in order to render a professionally competent evaluation was not investigated. Ms. Wuornos's trial judge and jury were not able to "make a sensible and educated determination about the mental condition of the appellant at the time of the offense." Ake, 105 S. Ct. at 1095.

A wealth of compelling mitigation was never presented to the Judge charged with the responsibility of whether Ms. Wuornos would be sentenced to life or death. This mitigation evidence was withheld from

the Judge, and this deprivation violated Ms. Wuornos's constitutional rights. See Penry v. Lynaugh, 109 S. Ct. 2934 (1989); Eddings v. Oklahoma, 455 U.S. 104 (1982); Lockett v. Ohio, 438 U.S. 586 (1978).

Attorney Steve Glazer failed to call any witnesses, lay or expert, at mitigation.

Trial counsel presented a closing argument emphasizing appellants's upbringing and her mental health. In lieu of calling his own witnesses and presenting his own evidence on behalf of his client, Mr. Glazer merely alludes to doctors reports filed in another phase of the trial to determine her competency after she had pleaded guilty. These reports were not even prepared with the perspective of mitigation in mind. Trial counsel also attempted to utilize the testimony of **state witnesses** Lori Grody and Tyria Moore to bolster his claim of appellant's deprived childhood.

Defense Counsel's client, Ms. Aileen Wuornos, was according to some criminal justice observers the first female serial killer - not in a care giver capacity - in American criminal history.

Appellant's case was heralded by criminologists and sociologist alike as perhaps the first instance in American history of a female serial killer who was not in a care-giving capacity, i.e. nurse or health professional. It was perceived as novel in that it resembled behavior of male serial killers.

Given this unique and novel nuance to his client's case, trial

counsel's grossly inadequate strategy of calling no witnesses at the penalty phase was additionally deficient in failing to adequately address the complexity of the issues involved.

Defense counsel had been contacted by Phyllis Chesler, Ph.D. a professor of Psychology and Women's studies an expert witness and psychotherapist. Dr. Chesler had offered to call a team of experts on the issue of prostitution, violence and post traumatic stress disorder. Appellant's attorney ignored her offer of assistance.

Dr. Chesler had taken an interest in the case and had recognized many parallels between her research and an emerging phenomenon which later came to be known as post traumatic prostitution stress disorder. This was a post traumatic stress disorder condition which has since emerged in psychological and medical literature which was found to exist in women who had engaged in prostitution.

Dr. Chesler had offered to assemble a panel of four prominent psychologists and scholars who would have testified pro bono as to the presence of this in appellant's make up. Ample reference was made to them and what their testimony would have been on in appellant's postconviction motion (PC-R. 168 -169)

Trial counsel's failure to call any witnesses or present any evidence at mitigation constituted the ineffective assistance of counsel and warranted at the least an evidentiary hearing. Furthermore trial counsel's failure to attempt to address the complexity of

appellant's case by calling Dr. Chesler's panel of experts fell below the range of reasonable professional assistance.

A Rule 3.850 litigant is entitled to an evidentiary hearing unless "The motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; Lemon v. State, 498 So. 2d 923 (Fla. 1986). Under this standard, the allegations in Ms. Wuornos' Rule 3.850 motion clearly require an evidentiary hearing.

The prejudice to Ms. Wuornos resulting from the attorney's deficient performance is clear. Confidence in the outcome is undermined, and the results of the penalty phase are unreliable. An evidentiary hearing must be conducted, and postconviction relief is proper.

ISSUE X

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE MERITORIOUS CLAIM THAT TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE AND PREPARE MITIGATING EVIDENCE IN THE FORM OF LAY WITNESSES WHO KNEW APPELLANT FROM HER YOUTH, FAILED TO PROVIDE ANY MENTAL HEALTH EXPERTS WITH THIS MITIGATION, AND FAILED TO ADEQUATELY CHALLENGE THE STATE'S CASE. COUNSEL FAILED TO ADEQUATELY OBJECT TO EIGHTH AMENDMENT ERROR. COUNSEL'S PERFORMANCE WAS DEFICIENT, AND AS A RESULT, MS. WUORNOS' DEATH SENTENCE IS UNRELIABLE.

The performance of appellant's trial counsel was prejudicially deficient in the penalty phase of appellant's trial in failing to

locate and present lay witnesses who would have established compelling reasons for mitigation.

Appellant identified in her postconviction motion at least five available witnesses who, if called, could have testified as to the depraved and challenging circumstances of appellant's upbringing as well as to some of her redeeming characteristics. This omission was particularly prejudicial because on this issue, as the case went, all the Judge was left to consider was the testimony of appellant's sister, Lori Grody, whose testimony was offered by the state to create the impression that appellant grew up in a stable, if not unremarkable household.

If identified with particularity to the attorney and to the court in a collateral motion as to name address and content of expected testimony a claim such as this can be facially sufficient if it is shown how the omission of the evidence prejudiced the outcome of the trial. Anthony v. State, 660 So. 2d 374 (Fla. 4th DCA 1995), Rogers v. State, 652 So. 2d 972 (Fla. 1st DCA 1995). If a question arises about whether to investigate and call certain witnesses is a tactical decision of the attorney, generally an evidentiary hearing is required. Comfort v. State, 597 So. 2d 944 (Fla. 2d DCA 1992).

Counsel's conduct fell below the wide range of reasonable professional assistance. There is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would

have been different; therefore confidence in the efficacy and integrity of the trial's outcome is accordingly undermined.

ISSUE XI

THE TRIAL COURT ERRED IN SUMMARILY DENYING WITHOUT A HEARING THE MERITORIOUS CLAIM THAT MS. WUORNOS WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT AND PENALTY PHASE OF HER TRIAL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO ADEQUATELY INVESTIGATE AND THOROUGHLY DEVELOP THE ISSUE OF THE MOVIE DEAL BETWEEN THERE OF THE ARRESTING OFFICERS, A ONE TIME SUSPECT, TYRIA MOORE AND REPUBLIC PICTURES

Postconvcition investigation has revealed that in deposition testimony given by Marion County Sheriff Major Dan Henry who investigated appellant's case, he claimed that his activity in attempting to procure a movie production of appellant's story as limited to the initial discussions with representatives of Republic Pictures but that this effort once aborted represented the extent of his activity.

Major Henry steadfastly maintained that the only activity he engaged in beyond these initial activities was to have provided public access documents of a public nature such as police reports.

Major Henry acknowledged that when he traveled to Ohio to interview Tyria Moore she was a homicide suspect.

Marion County Sergeant Bruce Munster, in postconviction deposition testimony, similarly insisted that he acted in no way to promote or foster the production of any media account of appellant's story or that he realized any pecuniary gain from such.

Sergeant Munster further insisted in his deposition testimony that state witness and appellant's ex-roommate, Tyria Moore had been ordered in seclusion by assistant state attorney David D'amore, who desired for her not to have any media contact. Sergeant Munster testified that he ensured that Ms. Moore did not grant interviews or otherwise communicate with anyone regarding the case.(DT-107)

Sergeant Munster claimed in his deposition that the first time he became aware of any proposed movie deal surrounding the case was in February of 1991 subsequent to appellant's arrest
(DT 105)

Sergeant Munster acknowledged that he, Binegar & Henry had met to discuss the prospects for a movie deal flowing from there involvement in the case but cannot recall whether or not such talks included mention of Ms. Moore.(DT 103)

In the same deposition testimony he acknowledged Tyria Moore to be a suspect:

> Q. Okay Tell me what Tyria's state of mind –what is her emotional condition when you first came in contact with her up in Pennsylvania and began to talk to her about Lee?

A. Emotional condition? I think through parts of it she was sorry, sad, frightened. She had expressed–whether it was on tape or off tape–remorse that she hadn't come forward sooner. I seem to recall her saying that eventually she would have. I think she felt responsible. What she was telling me, that had she come forward before after Lee had told her that she had killed the first guy, that all the rest of the guys may have lived.

Q. Okay so if..–

A. She was helpful, cordial.

Q. At any time prior to her giving you this taped statement–

A. Which one?

Q. The one up north

A. Okay.

Q. Okay, the first one.

A. Right

Q. Did she know that she as not going to be charged?

A. No. No. She was considered a suspect all the way through bringing her back to Marion County. Or not Marion County. I'm sorry: Volusia County

Q. Okay. So she's in – we're back now. You've brought her back on the 12th. You take her to Volusia County.

A. Right

Q. And what is the reason for taking her to Volusia County?

> Q. And what is the reason for taking her to Volusia County?
>
> A. Multifaceted. We wanted her to point out the locations whether they had lived to help us with the background. There was discussions of polygraphs. There was a multitude of reasons.
>
> Q. Polygraphs for whom?
>
> A. Tyria
>
> Q. And did she take a polygraph?
>
> A. No. She offered to but we didn't run her. (PC-R. 197-98)

It had been the contention of Marion County Detective Brian Jarvis, who also was a law enforcement officer involved in the criminal investigation of Ms. Wuornos, that the investigation had taken an ill turn based on the eagerness of his colleagues to close a movie deal, their apparent inclusion of Tyria Moore in such efforts and, most seriously, their apparent willingness to overlook her possible complicity in the crimes committed because of their deal.

Jarvis, who himself had contracted with a writer named Michael McCarthy of Miami, Florida to write a story on the investigation, felt that evidence implicating Moore had been ignored by individuals who were eager not to jeopardize their book deals.

McCarthy, according to Jarvis, had learned when he commenced his writing efforts that Captain Binegar, Sergeant Munster, Major Henry, and Tyria Moore had all signed a contract with Republic pictures.

Subsequent to the trial in the latter part of 1992, there occurred a subsequent investigation with ensuing action taken which inferred that the substance of the testimony of Moore or Messrs. Munster, Henry and Binegar was less than accurate.

A lawsuit filed by Movie Producer Jacquelyn Giroux against Aileen Wuornos centered on the apparent contention that the movie rights she believed she had been contractually acquired had been taken away from her by a deal between Republic Pictures Ms. Wuornos, Sergeant Munster, Major Henry, Captain Binegar and Tyria Moore.

As a result of discovery depositions which occurred in the course of that lawsuit. Major Dan Henry was forced to resign and Sergeant Munster and Captain Binegar were demoted.

The basis of this development was a conversation between Major Henry and Sergeant Munster which was tape recorded by the latter. The clear inference of the tape recorded conversation between Major Henry and Sergeant Munster was that the deposition testimony of Captain Binegar, Sergeant Munster and Major Henry given to the Appellant's trial counsel in 1992 prior to the commencement of trial had been less than candid: This assertion is more than amply addressed by the following excerpts from two tape recorded telephone conversations. The first one is of October 20, 1992 at 3:07 PM:

BM: Sergeant Bruce Munster

DH: Major Dan Henry

* * *

DH: Uh, but listen first thing you are going to be asked is who did you talk to? Ok, I'm nobody. Do you understand that?

BM: Ok.

DH: I'm serious now.

BM: Ok, yes sir.

DH: I'm nobody.

BM: Ok.

DH: So you don't know who you are talking to so just assume you are talking to nobody.

BM: Ok.

DH: Can you do that?

BM: Oh, yeah. Ok. What, what , what else?

DH: Well I'm fixing, I wrote down some stuff here. But first thing was.

BM: Did you go in by yourself?

DH: Yeah I...

BM: Did Bradshaw, didn't go with you or nothing.

DH: No he's, hell he's gone on vacation.

BM: Oh that's right, that's right, ok.

DH: Uh, you know first thing was you know I knew the three of ya'll had gotten together and talked since the subpoenas. I said no we haven't. Well remind your under oath. I said look we haven't talked. I said I, I, I uh my secretary said there was a subpoena for me by the

Wuornos case. I called Bruce, and he didn't know to much about it. Isn't that right?

BM: Yeah.

DH: And I said, and I called Binegar and Binegar hadn't seen his either and I said I hadn't talked to those guys since.

BM: Ok.

DH: He said you haven't met with Ms. Wuornos uh, your attorney. I said yes I met with my attorney. He said you haven't met with those other guys? I said no I haven't.

BM: Ok.

DH: And uh, he said you haven't talked to them. I said no I haven't. You are going to be asked the same thing.

BM: Ok.

DH: Any way I want, I just want to getcha and give you a heads up.

BM: Ok.

DH: Basically, it's pretty much like, like Bradshaw probably explained to you. There, there going after the bucks.

BM: Ok.

* * *

DH: He really hammered on you know meeting with Bradshaw. How many times did we meet and I said a couple of times is all I remember and I said the rest of it was independent phone calls. I said even Bruce would talk to him. Steve would talk to him or I would talk to him and we would run into each other in the halls. He said well how many meetings did the three of ya'll had? I said, I said about what? He said well just

strictly about the movie deal. I said we didn't have any about the movie deal. I said we were in the break room and I said and I think I said, I said one of us said, I believe it was me said you know we ought to get Bradshaw to field these calls if they are going to start talking about you know waivers and contracts.

BM: Um uh.

* * *

DH: Well that's all right, I understand. There's no problem. I just wanted to make sure that you know I did whole lot of I don't recall. And he finally said uh, Ms. Wuornos Henry he said, you know especially with McClain and all them, I couldn't remember details about that. And he got real frustrated. He said I can't believe that, that yo can't recall the details of this. I said, sir that was almost two years ago. I said that will be two years ago, I said they wither came in January or February.

* * *

BM: Did he, did he, did he ask about those morning meetings? Uh, at the plantation and stuff.

DH: Now he asked about meetings. And I told him I couldn't remember. He said uh, well how many times did you meet with Bradshaw? I said I don't remember. And he said well, he said, he said, he said, if I remember, he said, he looked and he couldn't find it and he said well some where there some notations of meetings here. I said let me tell you something.

BM: That was in the State Attorney's Office report.

DM: Yeah. I said, I said that was two years ago. I kept, I repeated that through the whole thing. I said that was two years ago and I said I meet with a lot of people. And I said uh, you know I

met with a lot of people that were, that were writing you know stories on this thing. And uh, I really honestly can't remember. I said uh, I, I do remember having at least one meeting with him and I said there was possibly two and I said that's all I can remember.

* * *

BM: I bet you are glad it is over with.

DH: Oh man I am. But uh, you know I don't know if Bradshaw helped you are not but he really helped me by, I, I, thought of every answer and there are some things he could've asked that you know, he didn't ask and by god I didn't give it to him.

* * *

BM: From what I understand, they were doing a police story and Jacqueline Giroux was doing a Wuornos story.

DH: Yeah, but, but you don't act like you understand nothing.

BM: Ok.

DH: Really. I mean maybe, maybe yes the only questions he asked were about the police investigation, but don't act like you know nothing about her.

BM: Ok.

DH: Cause he really wants that. And Bradshaw said he can, what he can do with that is threaten to sue us, you know to bring us into a line.

BM: Yeah.

DH: You know hey you guys were a part of this damn thing. Now we are going name you in the damn thing.

BM: Yeah. Well.

DH: Because as long as we are stupid and innocent. He got real frustrated when I told him, he said well when did you first know that Jacqueline Giroux had movie rights. I said I, I don't know that she does, does period.

* * *

DH: You know, I'm hoping you know when you get into tomorrow, listen you, you know you are talking to Ms. Wuornos Nobody here.

BM: Ok. All right Ms. Wuornos Nobody.

DH: And uh, you know I mean, because he really wants to you know he really wants to show as much conspiracy as he can.

* * *

DH: Bruce what ever you do son, don't panic, and don't give him anything that you don't have to give him.

BM: Ok, major.

* * *

DH: See there ain't a damn thing they can do for you. They can't prove you can't remember.

BM: Yeah.

* * *

DH: Remember I'm Ms. Wuornos Nobody, you ain't talked to me.

BM: Ok, Ms. Wuornos Nobody. (PC-R. 201-205)

This assertion is more than amply addressed by the following excerpts from this second phone conversation of October 22, 1992 at 9:09 A.M.:

BM: Oh, I thought I did to. Uh, I didn't enjoy the depo yesterday.

DH: Well I didn't either. But.

BM: I didn't enjoy it at all. I can't, you know we got into it and, and they asked me particular questions about different things and some of the questions I refused to answer.

DH: Really.

BM: yeah.. Cause, like I said I can't lie about these things.

DH: Right.

BM: And uh, I just refused to answer them.

DH: Like what?

BM: Well, they asked me whether or not you had called me and I just refused to answer it. I can't lie.

DH: Well just tell them we did. We only talked.

BM: Well you, you know we talked before you told me that Ms. Wuornos nobody called and I'm following your instructions. But, but those questions I, I don't, I, don't know what's going to happen. When this was over with he said that they.

DH: See that just draws more attention. I would have rather you have just went ahead and told them. Say yeah we you know we talked about it. Well big deal. I mean it ain't against the law to talk about it.

BM: Yeah. Well he said that there was a good chance that this was going to be settled without any further actions and, and that none of this, none of the does or anything will be made public. So I'm kind of hoping that's what happens. But

I felt very uncomfortable um answering their questions. And it was, they asked very pointed questions just like you said that they would.

DH: Yeah they did me to. Well Bruce there was no reason to tell them we haven't talked.

BM: But you told me not to.

DH: No I didn't tell you not to. I said hey this is Ms. Wuornos nobody.

BM: Yeah.

DH: You know I said you, in fact that I told you, you do, you do what you want to do.

BM: Yeah.

DH: But I was giving you away out of if you wanted to say, hey I talked to Nobody.

* * *

DH: So you hung it all on me.

BM: No sir, I didn't.

DH: You have Bruce.

BM: Sir, Major.

DH: Don't sir me, it's a Dan and Bruce. I'm not going to do anything. I respect you and think you are the best. Now bull shit on all this taking all this official road here. You know they, I'm not going to do anything to you. I love you like a brother, but you hung me out to dry.

* * *

BM: Ok, I'll, I'll, I'll get a copy of my deposition and, and I'll make some corrections on it. Because I want to make it, I want to make it right.

DH: You don't make any corrections, let me tell you, being you are playing this game this way.

BM: Sir, I'm not.

DH: I'm not asking you to make any corrections on that deposition. I'm not asking you to do anything. If you think you gave, you told it accurately, if you're sure you told that stuff accurately then you, you leave it the way it is.

BM: Yes sir. I, I wish I could retire today. I wish I had never heard of Aileen Wuornos.

DH: Well we all do. But damn it, you know you find.

* * *

The fact that Tyria Moore was in possession from some of the murder victim's property, the fact that she had expressed remorse for giving safe shelter to her roommate cognizant of the string of killings which she later confessed to having committed constitute significant information leads in this case incriminatory of Miss Moore which law enforcement chose to overlook.

This evidence would definitely have rendered a different outcome in the sentencing phase as it would have imparted to defense counsel a rather compelling basis and reason for mitigation namely the culpability from the logical un-indicted co conspirator, Tyria Moore. This evidence is significant as concerns the Pasco Case by virtue of the fact that Tyria Moore was a considered a suspect as either a conspirator or an accessory in all of the killings.

This evidence was available and known to attorney Steven Glazer

whose case did not end until January of 1993. The investigation into the subsequent legal testimony given on he case by the aforementioned officers concluded and resolved itself by November of 1992.

A Rule 3.850 litigant is entitled to an evidentiary hearing unless "The motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; Lemon v. State, 498 So. 2d 923 (Fla. 1986). Under this standard, the allegations in Ms. Wuornos' Rule 3.850 motion clearly require an evidentiary hearing.

Counsel's conduct fell below the wide range of reasonable professional assistance. There is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different; therefore confidence in the efficacy and integrity of the trial's outcome is accordingly undermined.

XII

EXECUTION BY LETHAL INJECTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND WOULD DEPRIVE Ms. WUORNOS BRETT OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTH, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION;

The Eighth Amendment prohibits governmental imposition of "cruel and unusual punishments," and bars "infliction of unnecessary pain in the execution of the death sentence," Louisana ex rel. Francis v. Resweber, 329 U.S. 459, 464, 91 L. Ed. 422, 67 S. Ct. 374 (1947)

(plurality opinion). "Punishments are deemed cruel when they involve torture or a lingering death . . ." In re Kemmler, 136 U.S. 436, 447, 34 L.Ed. 519, 10 S. Ct. 930 (1890). The meaning of "cruel and unusual" must be interpreted in a "flexible and dynamic manner," Gregg v. Georgia, supra, 428 U.S. at 171 (joint opinion), and measured against "evolving standards of decency that mark the progress of a maturing society," Trop v. Dulles, 356 U.S. 86, 101, 2 L.Ed. 2d 630, 78 S. Ct. 590 (1958)(plurality opinion).

Despite the perception that lethal injection is a painless and swift means of inflicting death, it is a method in which negligent or intentional errors have caused the persons executed intense suffering. Even when persons executed by lethal injection are first paralyzed, it is not clearly demonstrated that they become unconscious of their pain and impending death. 8. Indeed, a significant number of the persons executed by lethal injection in other states have suffered extremely painful and prolonged deaths resulting in wanton and unnecessary infliction of pain. Accounts of botched executions have been widely reported. For example, one of the many botched executions reported includes the lethal injection of Rickey Ray Rector, described as follows:

> On January 24, 1992, in Varner, Arkansas, it took the medical staff more than 50 minutes to find a suitable vein in Rickey Rector's arm. Witnesses were not permitted to view this scene, but reported hearing Rector's loud moans throughout

> the process. During the ordeal, Rector, who suffered serious brain damage from a lobotomy, tried to help the medical personnel find a patent vein. The administrator of the State's Department of Corrections Medical Programs said, paraphrased by a newspaper reporter, "the moans came as a team of two medical people, increased to five, worked on both sides of Rector's body to find a suitable vein." The administrator said that may have contributed to his occasional outbursts. Joe Farmer "Rector, 40 Executed for Officer's Slaying," Arkansas Democrat-Gazette, January 25, 1995; Sonya Clinesmith, "Moans Pierced Silence During Wait," Arkansas Democrat-Gazette, January 26, 1992.

Based on eyewitness accounts of such executions, coupled with available scientific evidence regarding the hazards, lethal injection is unreliable as a "humane" method for extinguishing life. Accordingly, execution by lethal injection constitutes cruel and unusual punishment.

Because no person has been executed pursuant to Florida's lethal injection protocol, because the Florida's protocol has never been subjected to judicial review, much less revealed, because the state has no person qualified to administer lethal injection and because no Florida court has ruled on the merits of the cruel and unusual punishment claim, the lethal injection method of execution must be subjected to judicial review at the trial level and subsequent stages of the proceedings to determine whether the method constitutes cruel and unusual punishment. Fierro v. Gomez, 77 F.3d 301 (9th Cir. 1986),

vacated and remanded, 136 L.Ed.2d 204 (1996); Campbell v. Wood, 18 F.3d 662 (9th Cir.) (*en banc*), *reh'g and reh'g en banc denied*, 20 F.3d 1050 (1994).

The Florida procedures for executing by lethal injection run the serious risk of causing excruciating pain to the condemned inmate and therefore is unconstitutional and violates the *Eighth* and *Fourteenth* Amendments to the United States Constitution and the Florida Constitution prohibition against cruel and unusual punishment.

The State of Florida has failed to establish standards for the administration of lethal injection as of writing and submission of this motion. Although certain methods of lethal injection have been held to be constitutional, none of the courts which have approved such methods have considered or actually know the method which is scheduled to be used in Florida.

To the extent that appellant can discern what the state's specific method of lethal injection is, she alleges that there is substantial danger that the proposed method will violate his constitutional rights to be free from unnecessary or excessive pain.

To the extent that Petitioner can discern what procedures exist to protect his constitutional right to be free from unnecessary or excessive pain during his execution, he alleges that they are inadequate in at least the ways enumerated below. Appellant has laid

out in great detail the exact problems that specifically inhere in the administration of the lethal injection.

As detailed in the denied motion for Postconviction relief the State of Florida has no coherent set of procedures and fails to designate adequate equipment or trained personnel for the preparation and administration of the injection, thereby raising substantial and unnecessary risks of causing extreme pain and suffering before and during his execution.

The state does not mandate that a physician or other trained medical expert be present to render treatment or assistance to a prisoner in the event of an emergency. Instead, the state mandates only that a physician be present to oversee the cardiac monitor.

The state sets forth no procedures (e.g., separate labeling of the syringes) to prevent the chemicals from being confused prior to or during the execution, and few if any procedures concerning the proper storage and safekeeping of the chemicals.

There have been many occasions in other jurisdictions when "botched" executions by lethal injection have occurred. In the absence of reasonable standards to ensure that the injection is accomplished skillfully and safely, there is a real and substantial danger that Petitioner will suffer such a fate.

In addition to the authorities cited above, petitioner hereby expressly, but not exclusively, relies upon the following principles of

law:

Absent comprehensive and coherent procedural safeguards, a prisoner is exposed to, at the very least, a risk of unnecessary or excessive pain. Fierro v. Gomez, supra, 865 F. at 141; Campbell v. Wood, 18 F. 3d 662, 681 As the District Court noted in Fierro v. Gomez, 865 F. Supp 1387, 1410 (N.D.Cal.1994), Campbell "set forth a framework for determining when a particular mode of execution is unconstitutional: objective evidence of pain must be the primary consideration, and evidence of legislative trends may also be considered where the evidence of pain is not dispositive." Id. at 1412. Significantly, the court in Fierro pointed out that the execution must also be considered in terms of the risk of pain. Id, at 1411.

In Lagrand v. Lewis, 883 F. Supp. 469, 470-471 (D. Arizona 1995), a prisoner's challenge to the constitutionality of lethal injection was based in part upon a doctor's affidavit, in which the doctor concluded that the lack of specific guidelines controlling dosage, sequence and delivery rate exposed the condemned to the risk that the drugs would not be administered properly, and that an improper procedure could cause the condemned to feel great pain. The doctor also noted that written instructions did not prescribe a level of training for the "consultants" who carried out the execution. The doctor concluded that severe infliction of pain could result from repeated attempts to insert the IV catheter into the prisoner's veins and that, if the catheter was

not inserted into a vein, the drugs would be injected into the muscle tissue, producing a much slower rate of absorption. The court rejected his claim, concluding, among other things that the relevant written procedures clearly indicated that the executions were to be conducted under the direction of the prison's Health Administrator, knowledgeable personnel were to be used, and the presence of a physician was required.

"The punishment of death shall be inflicted by the administration of a lethal gas or by an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death, by standards established under the direction of the Department of Corrections." Petitioner submits that the primary purpose–perhaps the sole purpose–of the "standards" mentioned in section 3604 is to protect a prisoner's constitutional right not to be cruelly executed. The cursory list of procedures se forth in the states submission, however, does not serve that purpose. The state has broad discretion to determine the procedures for conducting an execution. McKenzie v. Day, 57 F.3d 1461, 1469 (9th Cir. 1995). In McKenzie, the Ninth Circuit Court of Appeals noted that the state of Montana has developed procedures which "are reasonable calculated to ensure a swift, painless death and are therefore immune from constitutional attack." Id. Moreover, the Ninth Circuit declared in Campbell v. Wood, supra, 18 F.3d at 687, that "[t] the risk of accident cannot and need not be eliminated from the

execution.

Since the decision of the Court of Appeal in the Ninth Circuit in the Ninth Circuit in Fierro v. Gomez (No. 94-16775, February 21, 1996), holding execution by gas to be unconstitutional, the sole method execution which the state may carry out under this provision is by lethal injection l Under the clear language of the statute, such a method of execution may only be carried out by explicit "standards" which the department of Corrections must "establish". Thus, the process due to a condemned prisoner from the state is the administration of lethal objection by established standards.

In McKenzie v. Day 57 F.3d 1461, 1469, the Ninth Circuit Court of Appeals held that execution by lethal injection under the procedures which had been defined in Montana was Constitutional. The Court of Appeal explained that those procedures passed constitutional muster because they were "reasonably" calculated to ensure a swift, painless death...." McKenzie v. Day, 57 F3d at 1469. Such a statement cannot be made about the procedures in California. A swift, painless death cannot be ensured without standards in place to ensure that the lethal chemicals will be administered to Petitioner in a competent, professional manner by someone adequately trained to do so.

Similarly, in LaGrand v. Lewis, 883 F. Supp.469 (1995) the District Court in Arizona upheld the written Internal Management

Procedures prescribing standards for the administration of lethal injection because "they clearly indicated that executions are to be conduction under the direction of the ASPC-Florence Facility Health Administrator, knowledgeable personnel are to used, and... the presence of a physician is required."

Further, the United States Supreme Court's repeated holdings that "[capital proceedings must of course satisfy the dictates of the Due Process clause," Clemons v. Mississippi, 494 U.S. 738, 746 (1990) (citing Gardner v. Florida, 430 U.S. 349 (1977) (plurality opinion)), surely must apply to the procedures for actually carrying out an execution, which is the quintessential "capital proceeding." see also Hicks v. Oklahoma, 477 U.S. 343 (1980).

Appellant would request a evidentiary hearing tp properly prove the real prospect of Florida's lethal injection - however it is to be administered - constituting cruel and unusual punishment.

ISSUE XIII

FLORIDA'S CAPITAL SENTENCING STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED FOR FAILING TO PREVENT THE ARBITRARY AND CAPRICIOUS IMPOSITION OF THE DEATH PENALTY AND FOR VIOLATING THE GUARANTEE AGAINST CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. TO THE EXTENT THIS ISSUE WAS NOT PROPERLY LITIGATED AT TRIAL OR ON APPEAL, MS. WUORNOS RECEIVED PREJUDICIALLY INEFFECTIVE ASSISTANCE OF COUNSEL.

Florida's capital sentencing scheme denies Ms. Wuornos his right to due process of law, and constitutes cruel and unusual punishment on its face and as applied. Florida's death penalty statute is constitutional only to the extent that it prevents arbitrary imposition of the death penalty and narrows application of the penalty to the worst offenders. See Profitt v. Florida, 428 U.S. 242 (1976).

Florida's death penalty statute, however, fails to meet these constitutional guarantees, and therefore violates the Eighth Amendment to the United States Constitution. Richmond v. Lewis, 113 S.Ct. 528 (1992).

Execution by both electrocution and lethal injection impose unnecessary physical and psychological torture without commensurate justification, and therefore constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. See Claim XII.

Florida's death penalty statute fails to provide any standard of proof for determining that aggravating circumstances "outweigh" the mitigating factors, Mullaney v. Wilbur, 421 U.S. 684 (1975), and does not define "sufficient aggravating circumstances."

Further, the statute does not sufficiently define for the judge's consideration each of the aggravating circumstances listed in the statute. See Godfrey v. Georgia, 446 U.S. 420 (1980). This leads to the arbitrary and capricious imposition of the death penalty, as in Ms.

Wuornos's case, and thus violates the Eighth Amendment.

Florida's capital sentencing procedure does not utilize the independent re-weighing of aggravating and mitigating circumstances envisioned in Profitt v. Florida, 428 U.S. 242 (1976). Profitt is particularly offended when, as in this case, the judge finds, a statutory aggravator (CCP) which both includes the element of premeditation and is struck on direct appeal.

The aggravating circumstances in the Florida capital sentencing statute have been applied in a vague and inconsistent manner. See Godfrey v. Georgia; Espinosa v. Florida, 112 S. Ct. 2926 (1992). Florida law creates a presumption of death where but a single aggravating circumstance applies. This creates a presumption of death in every felony murder case, and in almost every premeditated murder case. Once one of these aggravating factors is present, Florida law provides that death is presumed to be the appropriate punishment, and can only be overcome by mitigating evidence so strong as to outweigh the aggravating factors.

The systematic presumption of death is fatally offensive to the Eighth Amendment's requirement that the death penalty be applied only to the worst offenders. See Richmond v. Lewis, 113 S. Ct. 528 (1992); Furman v. Georgia, 408 U.S. 238 (1972); Jackson v. Dugger, 837 F.2d 1469 (11th Cir. 1988).

To the extent trial counsel failed to properly preserve this issue,

defense counsel rendered prejudicially deficient assistance. See Murphy v. Puckett, 893 F.2d 94 (5th Cir. 1990).

Because of the arbitrary and capricious application of the death penalty under the current statutory scheme, the Florida death penalty statute as it exists and as it was applied in this case is unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution and under Article 1 Section 17 of the Constitution of the State of Florida. Its application in Ms. Wuornos's case entitles her to relief.

CONCLUSION AND RELIEF SOUGHT

Based on the forgoing, the lower court improperly denied Ms. Wuornos's rule 3.850 relief. This Court should order that his convictions and sentences be vacated and remand the cases for a new trial, an evidentiary hearing, or for such relief as the Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the following has been has been furnished by United States Mail, first class postage prepaid, to all counsel of record on February 1, 2001.

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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Initial Brief, was generated in a Courier non-proportional, 12 point font, pursuant to Fla. R. App. P. 9.210.

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