IN THE SUPREME COURT OF FLORIDA

AILEEN C. WUORNOS,

Appellant,

vs. **CASE NO. SC00-1748**

STATE OF FLORIDA,

Appellee.

_____/

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

ANSWER BRIEF OF THE APPELLEE

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CITATIONS: Reference to the record on direct appeal will be referred to as “R” followed by the appropriate volume and page numbers. Reference to the supplemental transcript on direct appeal will be cited as “Supp-R” followed by a page number. Citation to the post-conviction record on appeal will be referred to as “PC-R” followed by the appropriate volume and page numbers.

STATEMENT OF THE CASE AND FACTS

The State generally accepts the Statement of the case and facts set forth in appellant's brief but adds the following.

On direct appeal, the Florida Supreme Court affirmed appellant's convictions and sentence. This Court set forth the following summary of the facts in Wuornos v. State, 676 So. 2d 966 (Fla. 1995):

> Charles E. Carskaddon was last seen alive on May 31, 1990, when he left home on a trip to Tampa in his Cadillac. His body was found in Pasco County on June 6, 1990, in a secluded area. The remains were covered by an electric blanket and a large amount of uprooted tall grass. His vehicle and its contents were found in a separate location on June 6 or 7, 1990. At this time the car apparently was red-tagged by the Florida Highway Patrol and ultimately was towed away on June 13. Sheriff's officers later recovered it.
>
> The body was badly decomposing when found. The medical examiner determined that Carskaddon had died of gunshot wounds. Eight ".20 caliber" bullets were recovered from the body, and the examiner testified that all eight bullets were in regions that could cause death. She could not say which was the fatal bullet. The true height and weight of Carskaddon at the time of death also could not be determined due to decomposition.
>
> Witnesses had seen Aileen Carol Wuornos in possession of Carskaddon's car. Wuornos had pawned a gun identified as belonging to Carskaddon. She also faced charges in several similar murders involving men found dead along the highways of the Central Florida region.

With regard to the plea inquiry, this Court stated that the inquiry, while not exemplary, was sufficient:

...A detailed factual basis to accept the plea was

provided by the State without objection from Wuornos, and it clearly met the requirements of Rule 3.172(a). The colloquy between the trial court and Wuornos is not a model, but it nevertheless is apparent from the overall thrust of the conversation that Wuornos knew the import of her plea. The fact that a defendant is combative or makes apparently contradictory assertions is not itself sufficient reason to reject the plea: We recognize that defendants unschooled in legal niceties may well misuse legal terms of art such as "self-defense," as Wuornos did here, and may engage in conduct that does not comport with usual courtroom standards. This conclusion is only underscored by the defense attorney's comments made in the presence of Wuornos and without contradiction by her:

Ms. Wuornos understands specifically that she's giving up the right to claim self-defense. She understands she's giving up the right to claim involuntary intoxication as a defense, and she understands that she's giving up the right to insanity at the time, the offense as a reason. She understands those things. If you care to question her on it, you will find that she understands exactly what is happening here and she is competent to make these decisions.

I can represent to this court this woman is not insane. She understands what's going on and she is in full control of her mental faculties.

Wuornos herself made the following remarks under oath:

I understand everything, and as far as I'm concerned, I'm tired of the re-electorial scandals of trying to take these cases to court. And I've got three death sentences already that I'm not going to get appealed. I got one that may be appealed, very good appeal, and this one is silly, and I just don't--I know everything. Guilty.

In addition, the record before us contains a detailed form signed by Wuornos, her counsel, and the trial court. This form clearly meets all the requirements imposed by law, and the trial court upon inquiry established that Wuornos knowingly and voluntarily signed it. In addition, the trial court on the record asked Wuornos to initial several interlineations made in the document, which Wuornos did.

The obvious evil addressed by the United States

> Supreme Court in Boykin was of poorly advised defendants unwittingly subjecting themselves to death penalties by a guilty plea, or of facts that simply do not merit a death penalty. We believe that this is the type of "prejudice" contemplated by rule 3.172(i). Here, however, the record substantially and competently supports the trial court's finding of a basis to accept the plea. Wuornos herself indicated she was aware of the penalties she faced, knew the rights she was abandoning, and voluntarily had agreed to plead guilty. Although the procedures used below were not the most desirable, they nevertheless did not prejudice Wuornos within the meaning of rule 3.172(i). The record refutes any contention she was poorly advised or unwittingly subjected herself to the death penalty, and the facts here are of a kind that would warrant the death penalty in a full trial.[Footnote Omitted]. Accordingly, the deviations from the rule did not rise to the level of error.

676 So. 2d at 969-70.

As for any issue surrounding Wuornos's competence, this Court

stated:

> ...Wuornos contends that her behavior during the penalty phase was sufficiently "irrational" that the trial court erred in not ordering a new competency evaluation. We have read the record of the proceeding and do not find that Wuornos' conduct reached a level that should have triggered renewed evaluation. Wuornos' statements, while profane and disruptive, nonetheless were rationally organized toward a goal of conveying several impressions: that she was being mistreated by guards, that she could not receive a fair trial, and that she had been unfairly subjected to more trials than male serial killers such as Ted Bundy, among other matters. It is clear from the overall exchange that, although angry, Wuornos was capable of understanding what was happening and of interacting in a meaningful way in the proceedings. Only if she showed a lack of such capacity, we believe, would the trial court be obligated to order a renewed competency evaluation.

676 So. 2d at 970.

Only one letter appears in the record to support a claim that appellant was incompetent. In a letter dated July 13, 1992, Dr. Krop indicated that appellant had decompensated since he had last observed her and that she exhibited a fixed delusional system. Consequently, Dr. Krop believed that she was incompetent to proceed and that her ability to rationally participate in plea bargaining was significantly impaired. (R. 176). Defense counsel presented this letter to the trial court on July 14, 1992 and requested the appointment of additional experts to determine her competency.

Two additional experts were appointed and the conclusions reached by these experts appears in the record. In a report dated August 11, 1992, psychologist Don Del Beato reported that he evaluated appellant in a clinical interview and also administered a MMPI. While appellant did display some paranoid tendencies, he found that she was not psychotic. She did not complain of unfair trials, but did complain about having to go through the process since she was quite willing to plead guilty. She felt it was a waste of taxpayer money.

Appellant was able to disclose pertinent facts to her attorney and readily admitted that she intended to waive her right to trial. And she admitted “I am point blank guilty. I

killed them in cold blood. I know what I am doing." (Supp-R, 177). Dr. Del Beato concluded that Wuornos was competent to proceed with trial and to waive her right to personally appear. (Supp-R, 177).

Psychologist Joel J. Epstein evaluated Wuornos on August 6, 1992. He found appellant competent to enter a plea and waive any right to future appearances or appeals. He determined that her reasoning and judgment were not significantly compromised by any organic mental defect, insufficiency, illness or transient emotional state. She stated that she had done wrong in killing other human beings. Nevertheless, appellant still felt that there was an element of self-defense in all of her actions. Dr. Epstein also noted that Dr. Bernard who previously examined Wuornos did not believe that she was at any time psychotic during her offenses. (Supp-R, 178).

Pursuant to a request by the State, Dr. Daniel Sprehe was ordered to conduct an examination for the purpose of presenting penalty phase evidence. Dr. Sprehe concluded that within a reasonable medical probability, Wuornos was not suffering from any major demonstrable mental or emotional problems at the time of the offenses. Although, Ms. Wuornos had a long history of a personality problem, this would not qualify as being under the influence of extreme mental or emotional disturbance. In his

opinion, Wuornos had the capacity to appreciate the criminality of her conduct and to conform that conduct to the requirements of the law. (Supp-R, 179).

Appellant generally raised the following allegations of error on direct appeal:

> I--Whether the trial court conducted an adequate plea inquiry addressing the factual basis and whether or not the defendant was intoxicated or acted in self-defense.
>
> II–Whether the trial court erred in accepting defendant's waivers of right to trial by jury, to be present, and to present mitigating circumstances
>
> III–-Whether the trial court erred in failing to order a re-evaluation of appellant's competency when her conduct at the penalty phase was irrational and raised reasonable grounds to believe she was not competent
>
> IV–-Whether the trial court erred in failing to find aggravating circumstances not proven beyond a reasonable doubt.
>
> V–-Whether the felony murder aggravating circumstance is unconstitutionally overbroad.
>
> VI–-Whether the trial court erred in failing to weigh several mitigating circumstances.
>
> VII–-Whether the trial court violated the unusual punishment prohibition by imposing a disproportionate sentence.

On September 21, 1995, this Court affirmed appellant's conviction and sentence. Wuornos, 676 So. 2d at 966.

SUMMARY OF THE ARGUMENT

ISSUE I--The appellant's motion provided only conclusory allegations regarding failure to develop potential defenses. As such, the claim was properly denied without a hearing. Moreover, appellant failed to allege that but for counsel's alleged deficiencies, she would have insisted on pleading not guilty.

ISSUE II--Appellant failed to allege sufficient facts to show even the possibility of a conflict of interest between the appellant and her trial counsel. Moreover, as the trial court found below, the record makes it abundantly clear that trial counsel did exactly what appellant wanted in this case. Consequently, this claim was properly denied without a hearing below.

ISSUE III--Appellant's general asserted deficiencies of counsel were properly denied as appellant completely failed to allege any prejudice emanating from the claimed deficiencies.

ISSUE IV--While appellant asserts that counsel was ineffective for failing to have appellant evaluated before her plea, he failed to allege that such an evaluation would have led to a finding that she was incompetent. Moreover, as appellant was in fact evaluated and found competent shortly after entering her plea, the record rebuts any allegation that appellant may have

been incompetent at the time of her plea.

ISSUE V–-Appellant failed to allege sufficient facts to suggest a breakdown of the adversarial system. Appellant chose to fire her court appointed lawyer and utilize the counsel of her own choice. Appellant was competent to make decisions and control the scope and objectives of trial counsel's representation. Appellant completely failed to allege any prejudice emanating from trial counsel's allegedly substandard qualifications.

ISSUE VI–-Appellant failed to show how the alleged criminal past of Richard Mallory, the victim in the Volusia County case, if developed by counsel, could lead to a different result in this Pasco case.

ISSUE VII–-Appellant's cumulative error allegation offers insufficient facts to even assert an error before this Court.

ISSUE VIII–-Appellant's allegation that she received inadequate mental health evaluations provided an insufficient factual basis to warrant a hearing.

ISSUE IX–-Appellant failed to allege that she desired mitigation witnesses to be called on her behalf or that counsel misrepresented the consequences of pursuing this course of action. Appellant's claim made no sense in light of the fact that appellant chose to waive the presentation of mitigating evidence against her counsel's advice.

ISSUE X--Appellant's ineffective assistance of counsel claim surrounding the failure to investigate the "movie" deal allegedly made by investigating officers in another county provided no facts to suggest that using this information would have led to a different result in this case.

ISSUE XI–-Lethal injection is not cruel or unusual punishment and has been approved by this Court.

ISSUE XII---Appellant's assertion that the death penalty as applied in this case was unconstitutional was properly denied without a hearing. This issue was procedurally barred, without merit, and properly subject to summary denial.

ARGUMENT

PRELIMINARY STATEMENT ON APPLICABLE LEGAL STANDARDS

1) Standards of Review on the Summary Denial of Post-Conviction Relief

In Anderson v. State, 627 So. 2d 1170, 1171 (Fla. 1993), cert. denied, 502 U.S. 834 (1994), this Court observed that "[t]o support summary denial without a hearing, a trial court must either state its rationale in its decision or attach those specific parts of the record that refute each claim presented in the motion.[1] However, an evidentiary hearing is not a matter of right, a defendant must present "'apparently substantial meritorious claims'" in order to warrant a hearing. State v. Barber, 301 So. 2d 7, 10 (Fla.), rehearing denied, 701 So. 2d 10 (Fla. 1974)(quoting State v. Weeks, 166 So. 2d 892 (Fla. 1960)). The motion must assert specific facts which, if proven, would warrant relief. Fla.R.Crim.P. 3.850(c)(6). And, as for

[1]Undersigned counsel at times adds to the rationale expressed in the trial court's order summarily denying relief. The State notes that at least on direct appeal, this Court has not hesitated to find an error harmless based upon the record before the Court. See Heuss v. State, 687 So.2d 823, 824 (Fla. 1996)(affirming duty of appellate court to test for harmless error even when it is not argued by the State which is consistent with legislative directives "which prohibit reversal if the error does not result in a miscarriage of justice or injuriously affect a substantial right of the appellant." (citing Florida Statutes 59.041 and 924.33 (1995)). Where the record clearly rebuts a defendants' post-conviction claims as in this case, remand would result in nothing more than a waste of valuable time and judicial resources.

ineffective assistance of counsel, a defendant must allege specific facts that, when considering the totality of circumstances, are not conclusively rebutted by the record, and demonstrate that counsel's performance was so deficient that but for the deficiency, the outcome of the trial would have been different. Kennedy v. State, 547 So. 2d 912, 913-14 (Fla. 1989).

Both the state and federal courts have not hesitated in approving the summary denial of post-conviction relief where the pleadings and record demonstrate that a hearing is unnecessary. *See, e.g.*, Provenzano v. Singletary, 148 F. 3d 1327 (11th Cir. 1998); Provenzano v. Dugger, 561 So. 2d 541 (Fla. 1990); Provenzano v. State, 616 So. 2d 428 (Fla. 1993); Atkins v. Singletary, 965 F. 2d 952 (11th Cir. 1992); Atkins v. Dugger, 541 So. 2d 1165 (Fla. 1989); Kennedy v. Dugger, 933 F. 2d 905 (11th Cir. 1991); Harich v. Dugger, 844 F. 2d 1464 (11th Cir. 1988); Puiatti v. Dugger, 589 So. 2d 231 (Fla. 1991).

The seminal decision addressing ineffective assistance of counsel, Strickland v. Washington, 466 U.S. 668 (1984), explained the deleterious cost to society of the automatic grant of intrusive post-conviction inquiry:

> The availability of intrusive post-trial inquiry into attorney performance or of detailed guidelines for its evaluation would encourage the proliferation of

> ineffectiveness challenges. Criminal trials resolved unfavorably to the defendant would increasingly come to be followed by a second trial, this one of counsel's unsuccessful defense. Counsel's performance and even willingness to serve could be adversely affected. Intensive scrutiny of counsel and rigid requirements for acceptable assistance could dampen the ardor and impair the independence of defense counsel, discourage the acceptance of assigned cases, and undermine the trust between attorney and client.
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> **(80 L.Ed. 2d at 694-95)**

2) Procedural Bar

Matters which either were raised or could have been raised on direct appeal or previous post-conviction proceedings are procedurally barred on collateral review. It is well settled that a Rule 3.850 motion is not a substitute for, nor does it constitute a second direct appeal. "[A] Rule 3.850 motion based upon grounds which either were or could have been raised as issues on appeal may be summarily denied." McCrae v. State, 437 So. 2d 1388, 1390 (Fla. 1983)(string citations omitted). See generally Parker v. State, 718 So. 2d 744 (Fla. 1998), cert. denied, 526 U.S. 1101 (1999)(claims procedurally barred on second 3.850 motion for failure to object at trial, for having raised issue on direct appeal, or for having raised issues in prior motions or petitions); Maharaj v. State, 684 So. 2d 726 (Fla. 1996)(Post-conviction relief petitioner's claims which were either raised or could have been raised on direct appeal

were properly denied without an evidentiary hearing); Engle v. Dugger, 576 So. 2d 696, 702 (Fla. 1991)(claim that the trial court failed to provide a factual basis to support imposition of death sentence was "procedurally barred because it should have been raised on the appeal from re-sentencing."). Accord Cherry v. State, 659 So. 2d 1069 (Fla. 1995); Medina v. State, 573 So.2d 293 (Fla. 1990); Clark v. State, 690 So. 2d 1280 (Fla. 1997). Any attempt by a defendant to avoid the application of a procedural bar by simply recasting a previously raised claim under the guise of ineffective assistance of counsel is not generally successful. See Sireci v. State, 469 So. 2d 119, 120 (Fla. 1985)("[c]laims previously raised on direct appeal will not be heard on a motion for post-conviction relief simply because those claims are raised under the guise of ineffective assistance of counsel.") "Procedural bars repeatedly have been upheld as valid where properly applied to ensure the finality of cases in which issues were or could have been raised." Atkins v. State, 663 So. 2d 624, 627 (Fla. 1995).

ISSUE I[2]

[2]Appellant's issue one presents no specific claim other than attempting to delineate a *per se* rule in favor of evidentiary hearings. As the claim does not make any specific allegations, the State sees no need to respond.

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING THE CLAIM THAT APPELLANT'S ORIGINAL PUBLIC DEFENDER WAS INEFFECTIVE IN WAIVING APPELLANT'S RIGHT TO SPEEDY TRIAL. (STATED BY APPELLEE).

Appellant begins her argument by noting that counsel's highest duty is that to investigate. Appellant then proceeds to argue that she was somehow prejudiced when her original public defender agreed to a continuance and waived her right to a speedy trial. Neither claim presented sufficient facts showing deficient performance or resulting prejudice. As such, appellant's allegations were properly subject to summary denial.

The trial court denied this claim below, stating:

> ...However, defendant fails to demonstrate how a problem "inhered in the state's case," except for some nebulous insinuation about the number of murder charges filed against her in various counties in Florida. Furthermore, the speedy trial right granted by rule 3.191 is not one of constitutional dimension (2)[*Banks v. State*, 691 So .2d 490 (Fla. 4th DCA 1997)] and failure of counsel to advise defendant of application of Florida speedy trial rule does not render counsel ineffective.3 [*Davis v. Wainwright*, 547 F. 2d 261 (1977)]. In any event, defendant deposed her able public defender and engaged Mr. Steven Glazer to represent her in April of 1992.4 [Notice of appearance by Mr. Glazer was filed on April 4, 1992]. With the assistance of Mr. Glazer she entered a plea of guilty, specifically waiving her right to present any defense, admitted that she "killed him"5 [Page 11 of transcript of pre-trial conference on June 22, 1992 during which the defendant pled guilty] and accepted the factual basis for the charge recited by the state by failing to object.6[Transcript of plea on June 22, 1992.]

Of course, the proper test for attorney performance is that of reasonably effective assistance. Strickland v. Washington, 466 U.S. 688 (1984). The two-prong test for ineffective assistance of counsel established in Strickland requires a defendant to show deficient performance by counsel, and that the deficient performance prejudiced the defense. The prejudice prong is not established merely by a showing that the outcome of the proceeding would have been different had counsel's performance been better. Rather, prejudice is established only with a showing that the result of the proceeding was fundamentally unfair or unreliable. Lockhart v. Fretwell, 113 S.Ct. 838 (1993). The Defendant bears the full responsibility of affirmatively proving prejudice because "[t]he government is not responsible for, and hence not able to prevent, attorney errors that will result in reversal of a conviction or sentence." Strickland, 466 U.S. at 693. A claim of ineffective assistance fails if either prong is not proven. Kennedy v. State, 547 So. 2d 912 (Fla. 1989).

An unfortunate fact of litigating capital cases at the trial level is that defense counsel's performance will invariably be subject to extensive post-conviction inquiries and hindsight miasma. This Court has stated that ineffective assistance claims should be the exception, rather than the norm:

> Criminal trials resolved unfavorably to the defendant have increasingly come to be followed by a second trial of counsel's unsuccessful defense. Although courts have found most of these challenges to be without merit, defense counsel, in many of the cases, have been unjustly subjected to unfounded attacks upon their professional competence. **A claim of ineffective assistance of counsel is extraordinary and should be made only when the facts warrant it. It is not a claim that is appropriate in every case. It should be the exception rather than the rule.**

Clark v. State, 460 So. 2d 886, 890 (Fla. 1984)(quoting Downs v. State, 453 So. 2d 102 (Fla. 1984))(emphasis added). Unfortunately, despite this Court's admonition in 1984, it has become the rule, not the exception in capital cases.

The trial court correctly denied this claim. Appellant does not contend that the speedy trial period had run. Appellant's allegation simply stated that a speedy trial problem was inherent in the State's case. The State notes that discussion of the speedy trial date and the defendant's waiver appear in the record. (R-1, 22; Supp-R, 233-34, 239). The written waiver of speedy trial was signed by both the appellant and her public defender on July 12, 1991. (R-1, 22). Appellant failed to allege facts showing either deficient performance or prejudice.

As for failing to investigate potential defenses, the trial court correctly noted that discussion of a possible self-defense claim was made in open court on the record. Appellant specifically acknowledged she was giving up such a claim by

pleading guilty. (R-1, 200). And, defense counsel stated, on the record he had discussed appellant's concerns at great length, and appellant understood she was giving up her defenses of self-defense, intoxication and insanity. Glazer confirmed that she understood exactly what was happening. (R-1, 201). And, fatal to appellant's claim on appeal is that the post-conviction motion does not allege that absent proper investigation, she would have not pled guilty and insisted on going to trial. In order to establish prejudice resulting from deficient performance in the guilty plea context, a defendant must establish by a reasonable probability but for counsel's errors, he or she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58 (1985). And, if a defendant claims that counsel did not pursue a defense instead of a plea, the defendant must show that the defense likely would have succeeded at trial. Mangnum v. Hargett, 67 F.3d 80, 84 (5th Cir. 1995).

The only specifics mentioned in appellant's motion with regard to the failure to investigate was the fact that the defendant had alleged she acted in self-defense and that the victim had a gun and a criminal history. (PCR-2, 129). However, appellant fails to allege any additional facts to show how the fact the victim had a gun or that he had a criminal

record[3] might render a self-defense claim likely to succeed had she opted for trial. The State notes that the victim was shot eight times and his property was stolen by the appellant. Moreover, appellant does not allege that the victim in any way threatened her with a gun. Consequently, these allegations, even accepted as true, do not establish that counsel was ineffective.

In U.S. v. Berry, 814 F. 2d 1406, 1409 (9th Cir. 1987) the Ninth Circuit observed that an allegation of inadequate investigation must show what the witnesses would have testified to and how it would have changed the outcome. As observed by the District of Colombia United States Court of Appeals:

> ...a defendant basing an inadequate assistance claim on his or her counsel's failure to investigate 'must make a comprehensive showing as to what the investigation would have produced. The focus on the inquiry must be on what information would have been obtained from such an investigation and whether such information, assuming its admissibility in court, would have produced a different result.'

U.S v. Askew, 88 F. 3d 1065 (D.C. Cir. 1996), cert. denied, 136 L.Ed. 2d 340 (1996)(quoting Sullivan v. Fairman, 819 F. 2d 1382, 1392 (7th Cir. 1987).

Given the plea colloquy below, wherein the appellant was

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[3]Appellant failed to specify what the conviction was for and we are left to speculate about the convictions(s) relevance in the context of this case.

advised she was giving up the right to present any defenses, including any claim of self-defense, summary denial of this conclusory allegation was clearly appropriate. The limited facts alleged in the motion do not suggest that appellant had a tenable claim of self-defense. Accordingly, the ruling of the trial court below should be affirmed on appeal.

II.

WHETHER TRIAL COURT ERRED IN SUMMARILY DENYING THE ALLEGATION OF A CONFLICT OF INTEREST BETWEEN ATTORNEY GLAZER AND THE APPELLANT? (STATED BY APPELLEE).

Appellant claims that the trial court erred in summarily denying her allegation regarding a conflict of interest between the appellant and attorney Glazer. It is somewhat difficult to decipher exactly what the conflict of interest is as appellant alternatively mentions movie and book deals as well as the adoption handled by Glazer for appellant and Arlene Praille. (Appellant's Brief at 15-19). However, as the trial court recognized below, appellant failed to specifically identify any interest possessed by trial defense counsel that was actually adverse to her own: "The evidence makes it clear that there was no conflict between what Mr. Glazer did and what the defendant wanted." (PCR-2, 296). Appellant made it abundantly clear that

she wanted to plead guilty, waive the penalty phase, and be sentenced to death.

In Herring v. State, 730 So. 2d 1264, 1267 (Fla. 1998), this Court stated the following in addressing an allegation of conflict:

> To prove an ineffectiveness claim premised on an alleged conflict of interest the defendant must "establish that an actual conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan*, 446 U.S.335, 350, 100 S.Ct. 1708, 64 L.Ed. 2d 333 (1980); *Buenoano v. Dugger*, 559 So. 2d 1116, 1120 (1990). Our responsibility is first to determine whether an actual conflict existed, and then to determine whether the conflict adversely affected the lawyer's representation. A lawyer suffers from an actual conflict of interest when he or she "actively represent[s] conflicting interests." *Cuyler,* 446 U.S. at 350, 100 S.Ct. 1708. To demonstrate actual conflict, the defendant must identify specific evidence in the record that suggests that his or her interests were impaired or compromised for the benefit of the lawyer or another party. *See Buenoano v. Singletary*, 74 F.3d 1078, 1086 n. 6 (11th Cir. 1996); *Porter v. Singletary*, 14 F. 3d 554, 560 (11th Cir. 1994); *Oliver v. Wainwright*, 782 F. 2d 1521, 1524-25 (11th Cir. 11986). Without this factual showing of inconsistent interests, the conflict is merely possible or speculative, and, under *Cuyler*, 446 U.S. at 350, 100 S.Ct. 1708, such a conflict is "insufficient to impugn a criminal conviction."

In this case, appellant has not even sufficiently alleged that a possible or speculative conflict of interest existed between her and Mr. Glazer. In fact, appellant does not contend she did not approve of or was otherwise unaware of Mr. Glazer's media contacts. The deposition attached to appellant's motion

indicates that the media contacts were on appellant's behalf and at her direction. (PCR-2, 273-74). Thus, under Herring, appellant's allegations are facially insufficient; that is, even if her allegations are proven, they do not show a conflict of interest.

Aside from failing to identify any actual conflict, appellant fails entirely to allege what, if, any prejudice she suffered as a result of the alleged conflict. Consequently, appellant's claim was properly subject to denial without a hearing below. Again, a claim of ineffective assistance of counsel requires factual allegations, which, if true, would entitle appellant to relief. See LeCroy v. Dugger, 727 So. 2d 236, 240-241 (Fla. 1998)(upholding the trial court's summary denial of ineffective assistance claims where the trial court found "numerous other allegations of deficient conduct were noting more than conclusory claims that 'other' *unspecified* evidence should have been developed, or was available and should have been used."). In Kennedy v. State, 547 So. 2d 912, 913 (Fla. 1989), this Court stated:

> A defendant may not simply file a motion for post-conviction relief containing conclusory allegations that his or her trial counsel was ineffective and then expect to receive an evidentiary hearing. The defendant must allege specific facts that, when considering the totality of the circumstances, are not conclusively rebutted by the record and that

demonstrate a deficiency on the part of counsel which is detrimental to the defendant.

III.

WHETHER SUMMARY DENIAL OF APPELLANT'S ALLEGATION THAT HER TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO REVIEW DISCOVERY AND PREPARE THE CASE BEFORE APPELLANT'S PLEA? (STATED BY APPELLEE).

Appellant next asserts that the trial court erred in summarily denying his claim that counsel was ineffective in failing to thoroughly investigate the case before appellant entered her guilty pleas. This claim resembles the one above regarding appellant's failure to investigate a potential self-defense claim. As support for his allegation under this issue, appellant mentions that only two months elapsed before the plea was entered in this case and Mr. Glazer's appearance as counsel of record. (Appellant's Brief at 20-22). While post-conviction counsel mentions that Glazer failed to review discovery with the appellant, he completely fails to allege what, if any, favorable evidence might have been uncovered by such an investigation.[4] See LeCroy, 727 So. 2d at 240-241 (noting summary denial was proper where motion failed to allege what unspecified evidence should have been developed or should have been used); Oakley v. State,

[4]Glazer observed much of appellant's Volusia County trial and was therefore familiar with the evidence possessed by the State. Similarly, at the time of her Pasco plea, Ms. Wuornos was well familiar with the State's evidence, including the Williams Rule evidence of six murders by virtue of her trial in Volusia County.

677 So. 2d 879, 880 (Fla. 2d DCA 1996)(claims of ineffective assistance of counsel for failing to move for a change of venue and claim involving state's failure to disclose evidence were properly denied where the claims did not "allege sufficient facts to demonstrate the two prongs for ineffective assistance enunciated in Strickland v. Washington."). Nor for that matter does counsel even allege that a viable defense would have been discovered upon such a review. Appellant's claim is also deficient in that she fails to allege that had counsel reviewed the case and sufficiently discussed it with her that she would have insisted on pleading not guilty. Hill v. Lockhart, 474 U.S. at 58. For all of these reasons, summary denial of this claim was appropriate below.

IV.

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING APPELLANT'S CLAIM THAT HER COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE FOR A COMPETENCY EVALUATION PRIOR TO CHANGING HER PLEA? (STATED BY APPELLEE).

Appellant next asserts that her trial counsel was ineffective in failing to request a competency examination prior to her plea. (Appellant's Brief at 25). The trial court summarily denied this claim below, stating:

> Defendant next argues that Mr. Glazer was ineffective for failing to move to have the defendant evaluated

> for competency and sanity before and during trial. However, there was no trial and when the defendant was evaluated both experts concluded she was competent.

(PCR-2, 297). Appellant's claim was properly subject to summary denial.

Based upon this record, it is clear that potential issues surrounding appellant's competency were not ignored. She had previously been evaluated and found competent. She had gone through a prior contested trial in Volusia County and pled guilty in three separate cases in Marion County.[5] (Supp-R. 201). And, appellant also ignores the fact that a variation of this issue was raised on direct appeal and rejected by this Court.[6]

Finally, as the trial court noted, when defense counsel had reason to question her competence, he moved to have the appellant evaluated. The experts below found appellant competent. Thus, it is clear that Mr. Glazer acted to insure

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[5]In fact, there was no shortage of doctors who have found appellant competent, as noted by Mr. Glazer regarding the waiver of mitigating evidence:

> ...I think approximately seven or eight doctors have talked to Ms. Wuornos over the last two years. Not one of them said that she was incompetent at the time. All doctors say that she knew right from wrong. The issue of insanity at the time of the offense will not arise. (P 16).

[6]This Court stated that appellant's penalty phase conduct was not so irrational that it required a renewed competency determination. Wuornos, 676 So.2d at 970-71.

his client was competent, and moved for an evaluation when he had reason to question her competence. This Court observed that prior to the sentencing phase, Mr. Glazer brought this issue to the trial court's attention:

> ...When that date arrived, defense counsel presented a letter from Dr. Harry Krop stating that Wuornos was delusional and incompetent to proceed with trial. The trial court then ordered Wuornos evaluated by Dr. Donald DeBeato and Dr. Joel Epstein. These last two found that Wuornos was competent to stand trial but that she suffered from a personality disorder. Based on these conclusions, the trial court found Wuornos competent to proceed.

Wuornos, 676 So. 2d at 967.

Post-conviction counsel offered nothing in his motion below that would cast any doubt upon the finding of the experts below. In fact, post-conviction counsel does not even allege that had such an examination been conducted prior to the plea, there is a reasonable probability that appellant would have been declared incompetent. As such, the trial court properly denied this claim without an evidentiary hearing below. See Bush v. Wainwright, 505 So. 2d 409, 412 (Fla. 1987)(allegation that mental health professional would testify as to "a *possibility* of incompetence" at the time of trial was insufficient to require an evidentiary hearing on the defendant's competency to stand trial.)(Barkett, J., concurring)

V.

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING APPELLANT'S CLAIM REGARDING A BREAKDOWN OF THE ADVERSARIAL SYSTEM, CONSTITUTING *PER SE* INEFFECTIVE ASSISTANCE OF COUNSEL? (STATED BY APPELLEE).

Appellant next asserts that the trial court erred in denying his allegation that the media effects on this case coupled with his counsel's inherent inadequacies fostered a breakdown of the adversarial system. (Appellant's Brief at 28). The trial court denied this claim below, stating:

> Claim VI of the defendant in her motion is an amphorous argument that seems to contend that because of the impact of media coverage, the possible misconduct of some police officers in other counties and other cases, the alleged incompetence of Mr. Glazer to conduct a defense in the guilt phase of a capital trial, and a regurgitation of arguments contained in other claims, the defendant received ineffective assistance of counsel. However, as indicated above, the defendant as competent and received exactly what she wanted from her attorney, Mr. Glazer.[].

(PCR-2, 297).

As for the media effects assertion, appellant simply asserts that some of the officers involved in this case, from another county, pursued movie and/or book deals. What is entirely absent from appellant's allegations are any concrete facts showing that any of the evidence against her was compromised. Further, appellant fails to provide any credible theory as to how this so-called media influence, if fully developed, would

cast doubt upon appellant's conviction. Particularly in light of the overwhelming evidence of appellant's guilt possessed by the State, including appellant's own confession.

As for ineffective assistance of counsel, appellant cites no misrepresentations made to her by Glazer in order to induce her plea. Nor does she contend that but for counsel's asserted deficiencies she would have insisted on taking her case to trial instead of pleading guilty. As the trial court recognized below, a defendant is entitled to control the scope and objectives of her representation. (PCR-2, 297). See Hamblen v. State, 527 So. 2d 800 (Fla. 1988); Farr v.State, 656 So. 2d 448 (Fla. 1995). Appellant pled guilty knowing full well the rights she was giving up by doing so. It was clearly appellant's desire to plead guilty and waive any case in mitigation. See United States v. Ayala, 690 F.Supp. 1014 (S.D. Fla. 1988)(defendant's statements during plea colloquy about understanding nature and consequences of a guilty plea and absence of promises carries a strong presumption of truth supporting a decision not to permit withdrawal of a guilty plea). At no point does appellant suggest that Mr. Glazer in any way misrepresented the consequences of either pleading guilty, waiving her presence, and waiving the presentation of mitigating evidence. Indeed, as for waiver of presence and

mitigating evidence, appellant admitted she was pursuing this course against her counsel's advice.[7] (R-2, 26-27). See Rose v. State, 617 So. 2d 291, 294 (Fla. 1993)("when a defendant preempts his attorney's strategy by insisting that a different defense be followed, no claim of ineffectiveness can be made.").

Appellant cites United States v. Cronic, 466 U.S. 648 (1984), for the proposition that she need not establish either specific deficiency or prejudice from counsel's performance. In Cronic the Court recognized that some extremely limited factual scenarios may obviate the need for a defendant to demonstrate prejudice for ineffective assistance of counsel. However, despite the fact that the trial court in Cronic had appointed an inexperienced real estate lawyer who was given only a limited time to prepare the case against fraud charges, the Court declined to find such a situation per se ineffective. Instead, the Court found in Cronic that the defendant must plead and prove deficient performance and resulting prejudice. Cronic provides no support for appellant's claims for post-conviction

[7]In Nixon v. Singletary, 758 So. 2d 618 (Fla. 2000), this Court specifically observed, "[a]lthough an attorney has the right to make tactical decisions regarding trial strategy, *see* Faretta v. California, 422 U.S. 806, 820, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), the determination to plead guilty or not guilty is a matter left completely to the defendant." Nixon, at 623. In this case, it was clearly the defendant's desire to plead guilty.

relief. See Woodard v. Collins, 898 F. 2d 1027, 1028 (5th Cir. 1990)(prejudice prong required even where counsel advised defendant to plead guilty to a charge that counsel had not investigated); United States v. Reiter, 897 F. 2d 639, 644-645 (2d Cir 1990), cert. denied, 498 U.S. 990 (1990)(applying both prongs of Strickland despite defendant's claim that counsel's errors were so serious that it amounted "no counsel at all.").

In this case, none of appellant's allegations suggest that Glazer was incapable of representing her.[8] In fact, it is doubtful that a *per se* claim of ineffective assistance can ever be maintained where the defendant, as appellant did in this case, fires her publicly appointed attorney, and retains private counsel. This is a choice that the defendant made; a choice which the State neither participated in nor encouraged. The defendant bears the full responsibility of affirmatively proving prejudice because "[t]he government is not responsible for, and hence not able to prevent, attorney errors that will result in reversal of a conviction or sentence." Strickland, 466 U.S. at

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[8]In Cherry v. State, 25 Fla. L. Weekly S719 (Fla. 2000), this Court citing, Cronic., stated that the inexperience of trial counsel is insufficient, in an of itself, to render counsel's performance deficient. And, even a cursory review of the plea transcript and sentencing hearing reveal that Mr. Glazer was a capable attorney, cognizant of this Court's most recent cases regarding the waiver of mitigating evidence during the penalty phase. (R-2, 10-11).

693. This is particularly true in a case such as this where appellant fired her court appointed lawyer and utilized counsel of her own choice.

As appellant's allegation below completely failed to allege any prejudice, his claim was properly subject to summary denial. See Hays v. State of Alabama, 85 F. 3d 1492, 1496 (11th Cir. 1996)(ineffective assistance claim properly denied where defendant failed to show how better preparation would have changed the outcome of the trial).

VI.

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S CLAIM THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE THE CRIMINAL BACKGROUND OF VICTIM RICHARD MALLORY? (STATED BY APPELLEE).

Appellant next asserts that trial counsel was ineffective for failing to investigate the criminal past of Mr. Mallory. Specifically, appellant maintains that Mr. Mallory's stay in a treatment facility for the crime of housebreaking with intent to rape more than thirty years prior to his murder would have somehow changed the outcome of the instant case. (Appellant's Brief at 39). The trial court disagreed below, stating, that the failure to investigate one of the victims in a different County was not ineffective. The Court noted that Mr. Glazer conducted appellant's defense as she directed. (PCR-2, 298).

Indeed, Mr. Mallory's past was brought up by the prosecutor, but Mr. Glazer indicated that it was not allowed into evidence during a prior case and that he did not intend to introduce it in this case. (R-2, 5-6). Mr. Glazer earlier represented to the court that he advised appellant to use this evidence to develop a "self-defense strategy, and she once again has said that she would like to keep her plea of guilty and move on to the penalty phase." (R-2, 161-62).

A glaring deficiency in appellant's motion is that he failed to articulate exactly how such "evidence" would be admissible had appellant decided to use this information and take her case to trial. Nor does appellant even attempt to show how the alleged deficiency prejudiced her as she did not state that but for counsel's deficiency, she would have insisted on taking her case to trial on the Carskdaddon murder.

The defendant does not claim that she was aware of Mr. Mallory's criminal past at the time of his murder. Consequently, the fact that Mr. Mallory was charged with a sex offense well over thirty years prior to his fatal encounter with Wuornos is not relevant.

It must be remembered that only two types of evidence can be admitted to establish the victim's character when a defendant claims self-defense. The first method is to present the general

reputation for violence the victim has in the community. The second method allows evidence of the specific violent acts of the victim if known to the defendant. The method by which a defendant establishes each form of character evidence is quite different. The first method, the general reputation of the victim for **violence, does not allow reference to specific violent acts of the** victim. **See** Taylor v. State, 513 So. 2d 1371 (Fla. 2d DCA 1987). As a matter of law, a defendant's testimony, regarding the victim's past acts of violence toward others, is generally admissible when the defendant claims self-defense since the prior acts of violence address the reasonableness of the defendant's claimed apprehension of the victim. State v. Smith, 573 So. 2d 306, 318 (Fla. 1990). Third party testimony regarding such specific acts, however, is generally not relevant because such evidence fails to address the defendant's state of mind, but, instead, shows only a propensity by the victim toward violence. Id. Third party testimony regarding specific acts of violence may be admissible under another basis, however, as corroborating the defendant's claims, if it is first shown that the defendant knew about the same acts of violence. "Such corroborative evidence should be admitted cautiously in light of the need to limit evidence of specific acts because, *inter alia*, a jury may tend to give the

evidence too much weight, or it may sidetrack the jury's focus." Id. (citing C. Erhardt, Florida Evidence, s. 405.3 (2d Ed. 1984)).

The defendant has failed to show that the extremely remote in time 'conviction' or incarceration of the victim in her prior murder case was relevant and admissible in this case.[9] Thus, counsel's performance in regard to developing this potential evidence was not in any way deficient. In any case, even if Mr. Mallory's stay in a Maryland Institute for Sex Offenders from between 1958 and 1962 for a 1957 offense of housebreaking with intent to rape, was somehow admissible in the Volusia County case, there is no reasonable possibility that this evidence would have resulted in a different result. Appellant chose to plead guilty, confessed to killing multiple victims, and, the information offered about the victim in her prior murder conviction would have had no effect on the Mallory murder, much less the murders of her other victims including the victim in the instant case.

Given the obvious strength of the State's case against Wuornos, a picture emerges of a serial killer who profited from

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[9] Appellant's attempt to rationalize the victims' murders does not survive an analysis of the shear number of murders, which, the Florida Supreme held was admissible in her trial for the Mallory murder. Wuornos v. State, 644 So. 2d 1000, 1006-1007 (1994).

the victims' murders. It strains credulity to suggest that the outcome in the instant case would have been any different if only Mr. Glazer had investigated the background of Mr. Mallory and learned that he had a 'conviction' for an offense that occurred more thirty years prior to his murder. Based upon this record, Wuornos cannot demonstrate either deficient performance or resulting prejudice from counsel's failure to investigate the background of Mr. Mallory.

Finally, such evidence would not have prevented the State from using the prior conviction as an aggravator for the Pasco County murder of Mr. Carskaddon. At the time of her guilty plea, she had been convicted and sentenced for the Mallory murder. Further, it is apparent that the State possessed overwhelming evidence of her guilt in that case, including physical evidence, the testimony of her former girlfriend, and the defendant's own confession.[10] The defendant committed a total of six other murders in a similar manner, all apparently

[10]The dancers that the defendant has found who claim to know the victim do not suggest that Mr. Mallory was violent, only that he was interested in pornography and sex. As the victim probably picked up the defendant for sex, this comes as no surprise. Wuornos does not articulate any legitimate basis for admission of such prospective testimony. Indeed, such evidence would merely be used to show the victim's bad character and is not, in the State's view, admissible.

for pecuniary gain.[11] Nothing mentioned by Wuornos in this motion for post-conviction relief casts any doubt upon her prior murder conviction. For all of the above reasons, this claim was properly subject to summary denial below.

VII.

WHETHER THE TRIAL COURT PROPERLY DENIED APPELLANT'S CLAIM THAT HER GUILTY PLEA WAS FRAUGHT WITH PROCEDURAL AND SUBSTANTIVE ERRORS DEPRIVING HER OF THE RIGHT TO A FAIR TRIAL? (STATED BY APPELLEE).

Appellant frames her allegation as a denial of her right to a fair trial. (Appellant's Brief at 43). However, appellant chose to forego her right to a trial by pleading guilty. Further, the voluntariness of her plea was raised as an issue on direct appeal to this Court. This appears to be an allegation of cumulative error, however, appellant does not bother to brief the issue at all and simply states that "[t]he flaws in the system which sentenced Ms. Wuornos to death are many."

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[11] On direct appeal of the Mallory murder and death sentence, the Florida Supreme Court specifically approved the use of *Williams* Rule evidence. The Florida Supreme Court stated:

> In other words, the State relied on the similar crimes evidence to rebut Wuornos' claims regarding her level of intent and whether she had acted in self-defense. This was a proper purpose under the *Williams* rule. (citations omitted).

Wuornos, 644 So. 2d at 1006, 1007

(Appellant's Brief at 43). As appellant has failed to offer any specific argument in support of this claim, her allegation of error may be deemed waived on appeal. In Shere v. State, 742 So. 2d 215 (Fla. 1999), this Court addressed similar allegations of error, stating:

> In a heading in his brief, Shere asserts that the trial court erred by summarily denying nineteen of the twenty-three claims raised in his 3.850 motion. However, for most of these claims, Shere did not present any argument or allege on what grounds the trial court erred in denying these claims. We find that these claims are insufficiently presented for review. *See* State v. Mitchell, 719 So.2d 1245, 1247 (Fla. 1st DCA 1998)(finding that issues raised in appellate brief which contain no argument are deemed abandoned), *review denied*, 729 So.2d 393 (Fla. 1999).

See also Melendez v. State, 718 So. 2d 746, 749 (Fla. 1998)(where claims were either meritless or procedurally barred, there was no cumulative effect to consider); Johnson v. Singletary, 695 So. 2d 263, 267 (Fla. 1996)(no cumulative error where all issues which were not barred were meritless).

VIII.

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING APPELLANT'S CLAIM THAT SHE RECEIVED INADEQUATE MENTAL HEALTH EVALUATIONS UNDER AKE V. OKLAHOMA, 105 S.CT. 1087 (1985)? (STATED BY APPELLEE).

Appellant next asserts that she received inadequate mental health evaluations and that trial counsel failed to call "any witnesses, lay or expert, at mitigation." (Appellant's Brief at 45-46). Appellant, however, fails to mention that counsel was simply following her direction by not presenting mitigating evidence in this case. Mr. Glazer orally proffered the evidence he would have presented in mitigation pursuant to Koon v. Dugger, 619 So. 2d 246 (Fla. 1993) Nor does appellant claim that but for the general inadequacies mentioned in her motion, she would have insisted on the presentation of mitigating evidence on her behalf.

The trial court denied this claim below, stating:

> Claim IX in defendant's motion is very strange. It appears that the defendant is arguing that she did not receive an adequate mental health evaluation because (1) the experts were incompetent (but without alleging any grounds to support that allegation of incompetence); (2) "A wealth of compelling mitigation was never presented to the jury"; (3) defense counsel failed to call any witnesses in mitigation; (4) Mr. Glazer was "categorically ineffective" [] and (5) there were "experts" available who would have testified as defendant now believes would be beneficial to her. This court does not know how to respond to this argument except to identify it as illogical, even nonsensical.

(PCR-2, 298).

The trial court properly disposed of this issue below, recognizing that appellant's allegations simply made no sense in light the fact that appellant pled guilty and chose to waive the presentation of mitigating evidence. Moreover, the trial court recognized that although appellant's motion alleged that the experts provided inadequate evaluations, he failed to allege any specifics to support his claim. See e.g. Engle v. Dugger, 576 So. 2d 696, 701 (Fla. 1991)("Counsel had Engle examined by three mental health experts, and their reports were submitted into evidence. There is no indication that counsel failed to furnish them with any vital information concerning Engle **which would have affected their opinions.**")(emphasis added). Finally, the State notes that once again, appellant fails to allege that her decision not to present mitigating evidence in this case was based upon either coercion of counsel or trial counsel's material misrepresentations. As such, her claim was facially insufficient and properly denied without a hearing.

IX.

WHETHER TRIAL COUNSEL ERRED IN SUMMARILY DENYING APPELLANT'S CLAIM THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROCURE AND PRESENT LAY WITNESSES IN MITIGATION? (STATED BY APPELLEE).

Once again, appellant ignores that it was her own decision not to have counsel present mitigating evidence on her behalf. As the prosecutor noted at the Huff hearing below:

> ...And again, reiterating what I've said before, the Court has seen the opinion of the Supreme Court in this case, has seen the transcript, and has seen Ms. Wuornos. And for whatever reason, it is extremely clear that Ms. Wuornos asked for and got exactly what occurred to her. Her plea was voluntary; her request for the death sentence was voluntary; her request that she did not want any mitigation presented was voluntary.
>
> And contrary –- to make an observation –- contrary to Mr. Hobson's suggestion, Mr. Glazer probably went above and beyond the request of his client, even by cross-examining in attempting to elicit from the witnesses presented by the State, and from evidence that he had produced himself during the course of the penalty phase, mitigation for Ms. Wuornos contrary to what she had explicitly told him to do, and what she explicitly had requested of the Court, and that was that no mitigation be presented. She was not present. Perhaps had she been present, Mr. Glazer would not have been able to do what he did. But he did try to do something contrary to her wishes.

(PCR-3, 352-53). The trial court recognized that such a claim simply made no sense in light of appellant's decision below to waive the presentation of mitigating evidence against her counsel's advice. (PCR-2, 298). See Rose, 617 So. 2d at 294 ("when a defendant preempts his attorney's strategy by insisting that a different defense be followed, no claim of ineffectiveness can be made.").

X.

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING APPELLANT'S CLAIM THAT COUNSEL WAS INEFFECTIVE FOR FAILING TO DEVELOP THE ISSUE OF A MOVIE DEAL INVOLVING SOME OF THE INVESTIGATING OFFICERS? (STATED BY APPELLEE).

Once again, appellant asserts the investigating officers in Marion County improperly engaged in a potential movie deal and that defense counsel failed to properly develop this issue below. Again, however, appellant completely fails to show how this so-called movie or book deal corrupted the investigation, and, more important, how such an investigation would have altered the outcome of her Pasco County case. Specifically, appellant fails to allege which material piece of evidence linking her to the Carskaddon murder, her confession, or the property of the victim she pawned was corrupted or tainted. The trial court denied this claim below, recognizing that trial counsel presented this case as the defendant directed and noting that the deputies in Marion County "had little if anything to do with the Pasco case". (PCR-2, 298).

As appellant's allegations, even if true, do not cast any doubt upon her conviction in this case, she has not alleged sufficient facts to warrant a hearing. Nor for that matter does appellant state that but an inadequate investigation, she would have insisted on taking her case to trial rather than pleading

guilty. The lower court's summary denial of this claim was entirely appropriate.

XI.

WHETHER EXECUTION BY LETHAL INJECTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND WOULD DEPRIVE APPELLANT OF DUE PROCESS AND EQUAL PROTECTION UNDER THE UNITED STATES CONSTITUTION? (STATED BY APPELLEE).

Appellant next asserts that execution by lethal injection constitutes cruel and unusual punishment and is unconstitutional. Appellant's claim has been repeatedly rejected by this Court. Provenzano v. State, 761 So. 2d 1097 (Fla. 2000); Sims v. State, 754 So. 2d 665 (Fla. 2000); Bryan v. State, 753 So. 2d 1241 (Fla. 2000).

XII.

WHETHER FLORIDA'S CAPITAL SENTENCING STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND APPLIED? (STATED BY APPELLEE).

The trial court rejected this issue below, stating:

> Defendant next argues that Florida's capital sentencing statute is unconstitutional and the defendant's attorney was ineffective for failing to establish that lack of constitutionality. However, this is a tired argument that has been decided contra to the defendant's position by the highest court in Florida. (citing Provenzano v. Moore, 744 So. 2d 413 (Fla. 1999).)

(PCR-2, 297). As the trial court recognized, appellant's general attack upon the death penalty in Florida lacks any

merit. See Proffitt v. Florida, 428 U.S. 242 (1976); Sireci v. State, 587 So. 2d 450, 454 (Fla. 1991)("Sireci's claim that section 921.141, Florida Statutes (1987), is unconstitutional on its face and as applied is without merit."). In addition to being without merit, appellant's argument is procedurally barred as it was not raised at the trial level or on direct appeal.

CONCLUSION

Based on the foregoing arguments and authorities, the lower court's ruling denying appellant's motion for post-conviction relief should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Joseph T. Hobson, Assistant CCRC, Office of the Capital Collateral Regional Counsel - Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619, on this 29th day of March 2001.

_____

COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF TYPE SIZE AND STYLE

This brief is presented in 12 point Courier New, a font that is not proportionately spaced.

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COUNSEL FOR STATE OF FLORIDA