DOCKET NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CRAIG ALAN WALL, SR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

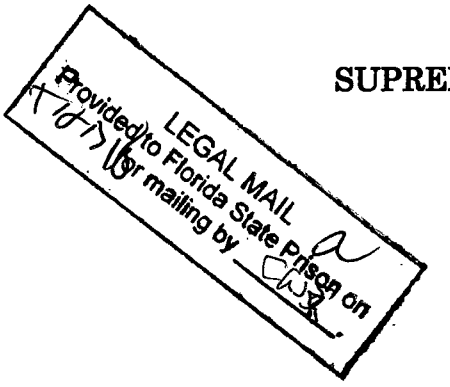
CRAIG WALL, SR.,
pro se applicant

CRAIG WALL, SR., DC# 140726
FLORIDA STATE PRISON
P.O. Box 800
Raiford, FL 32083

Counsel for Petitioner

July 24th, 2018. (Corrected)

DOCKET NO. _____



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Counsel for Petitioner

May 23, 2018.

QUESTIONS PRESENTED

—CAPITAL CASE—

1. REQUEST TO CERTIFY CONSTITUTIONAL QUESTION IN ACCORDANCE WITH 28 U.S.C. § 2403(b): How is Florida Statute § 90.804(2)(f) (2012) "Hearsay Exception: Statement offered against a party that wrongfully caused the declarant's unavailability" Constitutional when it completely removes a Defendant's Sixth Amendment right, as well as removes a Defendant's Fifth and Fourteenth Amendment rights to Due Process because no evidence need be presented by the State to support a claim to use this Statute; further, the Florida Supreme Court refused to adopt this Statute due to violating the Sixth Amendment specifically citing Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), but then, paradoxically, reversed itself and adopted the Statute upon rehearing motion by the State?

2. Can the State court force a defendant to appeal; force assigned counsel to abandon his client and become a thrall of the court; order counsel to purposefully violate the state Bar rules; then refuse to allow/strike *pro se* filings by unrepresented Appellant and make a "sham" of proceedings in Appellant's name?

3. Can the State court "invent" a version of the facts of the case; violate a signed plea agreement by pretending it is not an agreement via an "unreasonable determination of the facts"; and to refuse to hear unrepresented Appellant's brief, all in an effort to avoid a precedent setting issue while condemning Appellant to death without due process?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part:

> ... nor shall any person... be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law[.]

The Sixth Amendment to the Constitution of the United States provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him... and to have the assistance of counsel[.]

The Eighth Amendment to the Constitution of the United States provides in relevant part:

> ...nor cruel and unusual punishments inflicted.

The Ninth Amendment to the Constitution of the United States provides:

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment to the Constitution of the United States provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Florida Statue § 90.804(2)(f), provides:

> (2) Hearsay Exceptions - The following are not excluded under s. 90.802, provided that the declarant is unavailable as a witness:

(f) Statement offered against a party that wrongfully caused the declarant's unavailability - A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

Florida Rules of Criminal Procedure, Rule 3.171 provides in relevant part:

(a) In General. Ultimate responsibility for sentence determination rest with the trial judge. However, the prosecuting attorney and the defense attorney [] are encouraged to discuss and to agree on pleas that may be entered by a defendant.

(b) Responsibilities of the Prosecuting Attorney.

(1) A prosecuting attorney may:

(A) Engage in discussion with defense counsel [] with a view toward reaching an agreement that, upon the Defendant's entering a plea of guilty or nolo contendere to a charged offense [], the prosecuting attorney will do any of the following:

(iii) agree to a specific sentence

Federal Rules of Criminal Procedure, Rule 11, mirrors the Florida Rule:

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the Defendant's attorney [] may discuss and reach a plea agreement [.] If the defendant pleads guilty or nolo contendere to [a] charged offense [], the plea agreement may specify that an attorney for the government will:

(C) agree that a specific sentence [] is the appropriate disposition of the case [] (such a recommendation or request binds the court once the court accepts the plea agreement).

The Florida Constitution, Art. I, Sec. 10, states in relevant part:

> Prohibited laws. No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

The Florida Bar - Rules of Professional Conduct, which are wholly duplicated from the American Bar Association (ABA) Rules of Professional Conduct:

Rule 4 - 1.2 Objectives and Scope of Representation

> (a) Lawyer to Abide by Client's Decisions. [A] lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued.
>
> (b) No Endorsement of Client's Views or Activities. A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.
> American Bar Association(ABA) Rule 1.2 (a) and (b)

Rule 4 - 1.4 Communication

> (a) Informing Client of Status of Representation. lawyer shall:
>
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished
> ABA Rule 1.4 (a)(2)

Rule 4 - 1.8 Conflict of Interest; Prohibited and Other Transactions

> (b) Using Information to Disadvantage of Client. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.
> ABA Rule 1.8(b)

Rule 4 - 6.2 Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause such as when:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or of the law.
ABA Rule 6.2(a)

Rule 4 - 8.4 Misconduct

A Lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct [] or do so through the acts of another.
ABA Rule 8.4(a)

Rule 4 - 1.16 Declining or Terminating Representation

(a) When lawyer Must Decline or Terminate Representation. [A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or law;

(3) the lawyer is discharged.

(b) When Withdrawal Is Allowed. [A] lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interest of the client;

(2) the client insists upon taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement

(5) other good cause for withdrawal exists.

ABA Rule 1.16 (a)(1), (3) and (b)(1), (4), (7) (All emphasis added)

The Florida Constitution, Art. V, Sec. 3 (b)(1), which states in relevant part:

Section 3. Supreme Court.

(b) JURISDICTION. The Supreme Court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty[.]

CITATION TO OPINION BELOW

The decision of the Florida Supreme Court (State court) in this cause appears as Wall v. State, 2018 WL 1007960 (February 22, 2018), and is attached to this petition as Appendix A. The decision of the state circuit court sentencing Petitioner to two death sentences appears as State v. Wall, Sr., Case No. CRC10-03759CFAN0, and is attached to this petition as Appendix B.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for A Writ of Certiorari to the Florida Supreme Court on the basis of 28 USC § 1257. The Florida Supreme Court issued an opinion on February 22, 2018.

PROCEDURAL HISTORY

Craig Wall, Sr. (Petitioner) was charged by indictment for two counts of murder. On February 22, 2013, a hearing was held on Petitioner's Motion to Sever the two murder counts. Petitioner wished to plead guilty to count 1 (Laura Taft), and receive a fair trial on count 2 (Craig Wall, Jr. - "C.J."). The severance was denied by the court due to the State claiming to use a newly passed (but not yet approved by the Florida Supreme Court) amendment to hearsay exceptions, Florida Statute § 90.804(2)(f), which would allow the State to use Ms. Taft's recorded hearsay statements regarding C.J., thereby creating a "nexus" between the two counts where legally no "nexus" existed. Based on just the State's verbal contention, with no evidentiary hearing or any other due process, the court denied severance of the counts based on that hearsay evidence, thereby connecting the counts. On February 13, 2015, Petitioner and State signed a "plea deal for death" in accordance with Smith v. Indiana, 686 N. E. 2d 1264 (1997), whereby in

exchange for Petitioner changing his "not guilty" plea as to C.J. to "no contest" (Petitioner had always plead "guilty" to Ms. Taft, but it could never be accepted because of the severance denial) the State accepted a "negotiated sentence" of death. The pleas agreement form states in pertinent part, "The State and I agree to the death penalty in this case. Both parties agree □ death is the appropriate sentence." Based on this plea deal, and on Petitioner's "no contest" and "guilty" pleas, the court adjudicated Petitioner "guilty" on both counts. A penalty phase proceeding was held on February 23rd, 24th, 25th, and 27th, 2015, wherein the State showed proof of the aggravators in support of the pleas form (death sentence), and Petitioner was required (by rule) to present mitigation, so that the Florida Supreme Court had a "full presentation" of the record. On June 3, 2016, the court sentenced Petitioner to death on both counts.

On direct appeal the Florida Supreme Court affirmed both death sentences. Wall v. State, --So.3d.-- (Fla. 2018), 2018 WL 1007960 (February 22, 2018).

FACTS RELEVANT TO QUESTIONS PRESENTED

I. MOTION FOR SEVERANCE; OBJECTION TO HEARSAY; USE OF OBJECTED HEARSAY BY FLORIDA SUPREME COURT.

Petitioner's trial counsel filed a pre-trial Motion to Sever counts, and a hearing was held February 22, 2013. The situation was that Petitioner wanted to accept guilt for murdering Ms. Taft, and wanted a fair trial to PROVE his innocence in the death of his son, C.J.. Petitioner, from the moment he was arrested after killing Ms. Taft up 'till now, has admitted and accepted Total responsibility for killing Ms. Taft. Petitioner stated that in open court at dozens of hearings, and even attempted to "straight-up" plead guilty at

his very first pretrial held shortly after his arraignment hearing, without any pretexts or input. In other words, Petitioner made sure any attorney assigned to his case could not attempt to "defend" Petitioner for Ms. Taft's murder. Petitioner, although a despicable murderer, is not a liar or a coward who would plead "innocent" to killing someone just to spare his own life. Nor was Petitioner going to allow some zealous anti-death penalty lawyer find a way.

In contrast, Petitioner was completely innocent in the tragic death of his son. Just as Petitioner always, and repeatedly, claimed responsibility for murdering Ms. Taft; Petitioner has always, and repeatedly, asserted his innocence to having any part in whatever "unknown act" caused C.J.'s death, even during Petitioner's "Pro Se Supplemental Brief' filed in the State court - which is a HUGE part of this petition. Petitioner wanted a fair trial of the facts and evidence in C.J.'s inexcusable death.

Petitioner was engaged to Ms. Taft. C.J. was born to them on December 30, 2009. Ms. Taft had a child, Connor, from a previous marriage, who lived with Petitioner and Ms. Taft 70% of the time and with his biological father the other 30%. Petitioner, Ms. Taft, Connor, and C.J. lived as a family, and had done so for a year prior to C.J.'s birth. Petitioner was involved 100% in Connor's life as a "father."

On February 6, 2010 C.J. died (for details of the sequence of events, see the Florida Supreme Court's "Factual And Procedural Background" in their opinion found at Appendix A).

Twelve (12) days later, Petitioner murdered Ms. Taft (See: Appendix A for the inaccurate "version" of events), on February 17, 2010.

C.J. died from, medically speaking, some sort of "Blunt-force trauma". The State

claims either C.J. was "thrown on a soft surface" such as a mattress or couch, **OR** "shaken" (i.e., the medically debunked "Shaken Baby Syndrome" or "SBS"), **OR** "shaken" **AND** "thrown". Petitioner, although knowing the "result" (blunt-force trauma), has been frustrated that no doctors can tell him by what "mechanism" the injury was inflicted. It should concern this Court that Petitioner was sentenced to death for C.J.'s death, where the State did **NOT** present the Medical Examiner who did C.J.'s autopsy to testify as to the autopsy he did, his findings, and his determination as to the cause of death. Nor did the State present the State's Neuropathologist who was sent C.J.'s brain to examine by the Medical Examiner (M.E.) on the day of the autopsy. Why? Because both these experts would have put "doubt" based on their findings (like the neuropathologist stating C.J. had a "subdural hematoma", same thing that he died from, "that was over a week old). How often does this Court see death sentences where the M.E. doesn't testify, and instead the trial court allows another "expert", who is not a certified pathologist, give testimony as to facts of an autopsy and "cause of death" where that "expert" was not involved, or present, at the autopsy? So Petitioner was sentenced to death where "hearsay" testimony of the M.E.'s autopsy report, as explained by an "expert" who is not a pathologist and wasn't present during the autopsy. Petitioner points this out, not to ask this Court to do anything about it, but simply to show that had the appellate counsel actually ever "consulted" with Petitioner instead of doing things on his own as the State court's "counsel", he would have gotten this information from Petitioner. But since "counsel" was court ordered to "abandon" his client to "assist the court", he didn't ask Petitioner nothing about Petitioner's case. This Court will see this later in this Writ.

As to Laura Taft; she died from a stab wound into her heart.

As stated earlier; Petitioner has always admitted guilt to murdering Laura, but has (and always will) adamantly denied guilt in C.J.'s death.

The evidence in Laura's case is NOT admissible or relevant in C.J.'s case, due to C.J. dying 12 days earlier (even though C.J. is listed as "count 2"). The reason Laura's murder case isn't relevant in C.J.'s case is (1) Petitioner has always admitted guilt, (2) It's "Reverse Engineering", and (3) They "could" be connected with C.J.'s case going forward to prove "motive" for killing Laura, but since no "proof" is necessary to someone claiming "I killed Laura", the only way is by going IN REVERSE, and that doesn't work legally or even at all. Since Petitioner said on record, in open court, during dozens of hearings, "I killed Laura", that's a "done deal", so therefore NO evidence in C.J.'s case is needed to "prove" Petitioner killed Laura.

The two counts are "connected" SOLELY by Petitioner being "related to the victims" and his "alleged guilt in both instances", NOTHING ELSE. It was never "claimed" by the State that these are "spree" murders, nor connected in an "episodic sense" (12 days apart).

The purpose of the State, and the trial court, keeping the cases together is to use evidence in Laura's murder (which Petitioner has tried to plead guilty to since day 1 in court) to "be misused to dispel doubts of the other, and so effect a mutual contamination of the jury's consideration of each distinct charge." Garcia v. State, 568 So. 2d 896 (Fla. 1990).

So what we have here is two murders; one male one female; 12 days apart; do not have the same M.O.; in one guilt is admitted and innocent on the other; none of the evidence in the second murder is relevant to "Reverse Engineer" or connected to the first

murder; and the "post-homicide facts" in the second murder (stab wounds, huge pool of blood, etc.) would be used solely to contaminate the jury on fair consideration of the only murder being fought (C.J.). Clearly this is THE poster child for severance. In the simplest terms, "[I]f offenses cannot be joined, they cannot be consolidated; and if they cannot be consolidated, they cannot be joined." Macklin v. State, 395 So. 2d 1219, 1220 n.2 (Fla. 3d DCA, 1981).

On February 22, 2013 Petitioner had a hearing on his attorney's "Motion to Sever Counts". At that hearing the State claimed to use a brand new Statute (Petitioner was indicted exactly 3 years prior to this hearing), Florida Statute (F.S.) § 90.804(2)(f) which states, in layman's terms; if you kill someone with the intent of keeping them from being a witness in another case, you forfeit your Sixth Amendment rights. "You killed them, so you don't get to confront them as a witness"? That could be said under this new Statue, now how nuts is that: You kill someone, but before you killed them, they talked to the police. Some of that was recorded interview, some of it wasn't. You didn't know that person did that. You kill them for a COMPLETELY different reason; they smacked you and you "snapped." Now the State will use F.S. § 90.804(2)(f), to put officers on the stand to testify to what the victim said about you, THEN play the police interview with the victim as undisputable and unquestionable "fact evidence." What can you do when, for example, the victim tells numerous lies on the tape but you can't do ANYTHING to "dispute", "question", or "confront" a C.D./digital recording. Yes, this is LAW in Florida now.

So the State, to keep Petitioner's cases together because without Laura's admitted to murder TAINTING the fact evidence in C.J.'s case (this Court can't see it because

Petitioner wanted death AFTER he couldn't get severance and thereby, a FAIR trial in C.J.'s case), the State had a very weak case. Ask this: Why does this Court think Petitioner was never arrested UNTIL he murdered Laura 12 days later, even though they had the same M.E. and Neuropathologist's reports and same "evidence" and "witnesses" they had when Petitioner was indicted? And why was Petitioner "arraigned" for C.J.'s death almost a week after Laura's arraignment? Why are the counts backwards? Exactly. ALL the evidence the State put on, Petitioner LET THEM without putting up any fight (because it was a Plea Deal).

At the severance hearing the State claimed they could use the Statute, that had NOT even yet been approved by the Florida Supreme Court (as a "procedural" law, the State court has jurisdictional automatic review). As a matter of fact the State court did not issue a ruling as to that Statute until almost 10 months AFTER Petitioner's Severance hearing; In re Amendments to the Florida Evidence Code, 2013 WL 6500888 (Fla., Dec. 12, 2013), the State court rejected the Statute as violating the Sixth Amendment as well as Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Paradoxically, the State court Reversed itself on rehearing; In re Amendments to the Florida Evidence Code, 144 So. 3d 536 (Fla. 2014), and the State court implemented this completely unconstitutional Statute that completely removes the Sixth Amendment.

Petitioner, for the ease of reference of this Court, and because the first decision was removed from Westlaw, Petitioner is attaching the Florida Statute § 90.804(2)(f), and the two State court decisions as:

Appendix C: F.S. § 90.804(2)(f), as first passed, with dates of the Governor's

signature and filed with the Secretary of State.

Appendix D: In re Amend. Fla. Evid. Code, 2013 WL 6500888 (Fla., Dec. 12, 2013), this is the denial of the Statute. Please forgive Petitioner's underlining, Petitioner did that in 2014, but Petitioner cannot find this in the prison law library since the State court removed it from Westlaw. This is the only copy Petitioner can provide.

Appendix E: In re Amend. Fla. Evid. Code, 144 So. 3d 536 (Fla. 2014), with a cover page showing that the December 12, 2013 opinion has been removed from Westlaw (Maybe Petitioner is the only person with a copy of the original opinion). This is the approval of the Statute upon rehearing.

Appendix F: "Pro Se Supplemental Brief", and it's Exhibits, filed by Petitioner to the Florida Supreme Court.

Petitioner is Literally out of time to finish handwriting this Writ, THEN to try to "convince" a correctional officer to deliver it to the law library to type it (Law Clerks can't come on death row at Fla. State Prison, in violation of Fla. Dept. of Corr. rules, see:"Application for Assignment of Counsel" filed with this Court); and try to do the corrections to the typing. I wrote this section last, because I had to find and put case law in the "Reasons for Granting". Because of this, Petitioner begs this Court to simply use Appendix F, "Pro Se Supplemental Brief", Issue 3, pp. 63-77, for Petitioner's complete argument regarding the completely unconstitutional F.S. § 90.804(2)(f), and how it was illegally applied. Also, see: Douglas v. Alabama, 380 U.S. 415, 13 L.Ed. 2d 934, 85 S. Ct. 1074 (1965).

Lastly(and since Petitioner already pre-wrote it a few days ago); Petitioner is going to cite a transcript, word for word, as the Florida Supreme Court in their opinion -

Appendix A, p.4- THEY USE OBJECTED TO HEARSAY in their "Factual And Procedural Background". The hearsay the State court used; "Following that incident, Taft stopped the vehicle and checked on C.J., who appeared fine." Not only is that hearsay from Det. Kerry Spaulding; not only did Petitioner object and again fight the State regarding F.S. § 90.804(2)(f); not only can Petitioner show this Court PROOF that hearsay (from a dead person) is a complete lie (audio and transcription); not only was Petitioner's objection not overruled; THE FOLLOWING PENALTY PHASE TRANSCRIPT IS THE **ONLY PLACE** IN THE **ENTIRE RECORD** THIS HEARSAY IS FOUND. The Florida Supreme Court used objected to HEARSAY as "FACTUAL":

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STATE: And **did you discuss with Craig Wall and Laura Taft** an incident where Laura Taft had described stopping her vehicle short of an accident?

WITNESS: [DET. KERRY SPAULDING]: Yes.

STATE: And **in speaking with Mr. Wall, did he** acknowledge to you that there wasn't an actual crash?

WITNESS: Yes.

STATE: **Did he also indicate** initially that **he didn't think** that could have caused **his** child's injury?

WITNESS: Yes.

STATE: **Did his statements** in that regard involve [sic], during the course of the interview, to where **he then** began to suggest that was the injury?

WITNESS: Yes.

STATE: **Did you speak to Laura Taft** about that crash?

WITNESS: Yes, I did

STATE: **And in speaking to Laura Taft, did she indicate that the baby suffered any injury as result of that crash?**

WITNESS: **No, she pulled over at the school and checked him.**

STATE: And that crash --not crash, but near crash-- that incident had happened on the Wednesday preceding the Friday call for emergency help; was [sic] that correct?

THE DEFENDANT [*Pro Se*]:
Objection, Your Honor. He is **asking** questions **about a witness** who is no longer alive, **who I can't put on the stand [to]** prove or disprove what she's going to say. **This is hearsay.**

THE COURT: Response.

STATE: **As to this last question**, Judge, I believe **she spoke to both Mr. Wall and Ms. Taft** about the incident and the event. And **as to the prior question, I did not hear an objection,** Judge. (all emphasis added)

Petitioner would stop here to clarify a few things. Being *Pro Se* at the time, Petitioner consulted with standby counsel **when** the State asked the actual hearsay question, which was: "[S]peaking to Laura Taft, did she indicate that the baby suffered any injury as result of that crash?" **THAT** is a question as to hearsay, and **the response by Det. Spaulding was THE hearsay. As the State was in the process of asking this question**, Petitioner consulted and asked standby counsel if he could object to **that** question as hearsay, and counsel advised Petitioner he could object. That consultation between Petitioner and his two standby counsel, **took 15 seconds. During that 15 seconds** Det. Spaulding gave her hearsay answer to that question, **and** the State then asked a **second** question **to Det. Spaulding** as to the **timeline** of events. This **second** question **was a direct question** of **Det. Spaulding's personal knowledge** of the **timeline**, and was **NOT** a "hearsay" question whatsoever. **It was to establish the timeline, based on Det.**

Spaulding's personal knowledge, between **the date of the "near crash" (Wednesday)** and the date of the **"call for emergency help" (Friday)**. That **second** question, made **after**, the hearsay but **before** Petitioner voiced his objection to the hearsay (during Petitioner's 15 second consultation with his counsel), "[T]hat incident had happened on the Wednesday preceding the Friday call for emergency help; was [sic] that correct?" **is a direct question of Det. Spaulding** as to the **timeline**. It is obvious, on the face of the record, that question is **NOT** a hearsay question, just as it is quite obvious the question **of what Laura Taft said WAS** hearsay; and also that **NONE** of the **five** questions **preceding the question of what Laura Taft said** were hearsay in any form or fashion. It is quite clear Petitioner's hearsay objection was toward the **actual hearsay**. Prior to this **one** hearsay question, Petitioner had "allowed" the State to present into evidence "hearsay" of Laura Taft via a statement written by Ms. Taft for a "Restraining Order" request. No other "hearsay" of Laura Taft was attempted to be used by the State **until this point.**

Continuing with the transcript:

STATE: As to this last question, Judge, I believe she spoke to both Mr. Wall and Ms. Taft about the incident and the event. And as to the prior question, I did not hear an objection, Judge.

THE COURT: No, as to this - - yeah, **we will let her restrict her answers to whatever Mr. Wall said**, okay.

STATE: Judge, I would respond by - - I don't think I need to go further than that. **But in regard to prior questions, under 90.804(2)(f), based on Mr. Wall's homicide** which he's, in fact pled guilty to **of Laura Taft, he has precluded us from calling her as a witness.**

THE DEFENDANT:
I would object, Your Honor, because **that law was passed after 2010. It may have been passed specifically for me.** So, therefore, I feel that **retroactively applying that statute is illegal.**

THE COURT: All right. **Ex post facto is your argument?**

THE DEFENDANT:
Yes, Ex post facto.

THE COURT: Related to the evidence code, right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you want to make further argument or address that issue further?

STATE: Just **as to the ex post facto**, Judge. **I don't think it applies as procedural.**

THE DEFENDANT:
It does apply **in our case law that procedural law is ex post facto, especially if it's in this type of situation.**

THE COURT: Well, **I don't know that I need to get to that issue. He didn't object, so that is admitted - - that evidence was admitted. He's now objected, so I'm not really sure I want to go off on this.** I think the evidence code is procedural, right?

STATE: I believe so, Judge, and I have some authorities to cite for the Court on that, if necessary, but I think I can move on from here.

THE COURT: Yeah, I would rather do that. **You know, I don't really want to spend a half hour arguing about that procedure aspect. Can you confine your answers just to what Mr. Wall said about that situation**, Detective?

WITNESS: I can.

The record is clear here; Petitioner specifically objected to the hearsay response by Det. Spaulding of "she [Laura Taft] pulled over at the school and checked him [Craig, Jr. - "C.J."]."

This statement is not only illegal hearsay, it is doubly wrong as evidence exists that Ms. Taft LIED regarding "pulling over" and "check[ing] on [C.J.]". As a matter of fact (evidence), two (2) pieces of evidence (recordings) exist showing that hearsay statement is

a lie; (1) Interview by the same Det. Spaulding with Petitioner, several hours earlier, where it is stated Ms. Taft "chased" the other driver and never pulled over, and (2) Det. Spaulding and Ms. Taft hid a tape recorder in Ms. Taft's purse to record Petitioner, **without his knowledge**, wherein on the recording Petitioner and Ms. Taft discuss the "near accident" where it is established Ms. Taft lied to the police as she **never** pulled over to check on C.J., but instead "chased the dude" in the other vehicle.

REASONS FOR GRANTING PETITION

The root cause of everything in this situation is the State court's misinterpretation of their mandate that they must "review" all capital cases; Florida Constitution Article 5, Section 3 (b)(1): "Jurisdiction. The supreme court. Shall hear appeals from final judgments of trial courts imposing the death penalty," and the Legislature passed Florida Statute § 921.141 "Sentence of death [] for capital felonies; further proceedings to determine sentence. (5) Review of judgment and sentence. The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal."

The forcing a defendant to put on a "farce" appeal via a "counsel" who acts as an "agent" of the State while NOT: "representing" the actual appellant, "speaking for", "on behalf of", or even "consulting"; is an issue of not only Florida, but national importance as well as it is in conflict with decisions rendered on this issue by United States District Courts, the United States Supreme Court, as well as the same Florida Supreme Court when addressing collateral death penalty appeals. Most telling, and what should be a red flag to this court, is the fact that the Florida Supreme Court split in deciding to keep this un-Constitutional procedure going.

In a 4-3 decision, the State court in Robertson v. State, 143 So. 3d 907 (Fla. 2014), upheld it's using appellant's "counsel" as it's own "agent". As boldly stated in the case summary, the majority said "[T]here was no ethical violation under R. Regulating Fla. Bar 4-1.2(a) in requiring counsel to continue to prosecute the appeal fully for the benefit of the court in meeting its duties". Stated bluntly, "nothing wrong with betraying and abandoning your client, and violating your oath to the Florida Bar - who cares about "ethics" - this Court wants you to make our job easier." It should be noted by this Court that the same "agent" the State court used to betray his client Robertson, Julius Aulisio, Esq., was also Petitioner's "Judas" "counsel". See: Robertson v. State, 187 So. 3d 1207 (Fla. 2016). The first Robertson, id. 143 So. 3d 907, was to address his counsel's (Steven Bolotin, Esq.) "Motion to withdraw" (hereafter: Robertson-1); the second Robertson, id. 187 So. 3d 1207, was the actual "farce" appeal with Mr. Aulisio as co-counsel (hereafter: Robertson-2).

In Robertson-1, beyond the quote cited earlier, the real hubris of the majority is exposed in a special concurrence by Justice Pariente, joined by C.J. Labarga and Justice Perry (the most Liberal jurists on the court), in which this Court should be disturbed by:

> Despite our prior precedent, current appellate counsel asserts in the motion to withdraw that requiring him to file an adversarial brief will result in a violation of Rule Regulating The Florida Bar 4-1.2(a). In my view, this argument is unavailing because it fails to take into account both that counsel cannot be deemed to violate an ethical rule based on conforming to a court order, see R. Reg. Fla. Bar 4-3.4(c), and that this Court, which has the ultimate responsibility for interpreting the ethical rules, has previously determined that no ethical violation exists. See art. V, § 15, Fla. Const. (providing that this Court "shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted"); R. Reg. Fla. Bar 3-1.2 ("The

> Supreme Court of Florida has the inherent power and duty to prescribe standards of conduct for lawyers, *to determine what constitutes grounds for discipline of lawyers*, to discipline for cause attorneys admitted to practice law in Florida, and to revoke the license of every lawyer whose unfitness to practice law has been duly established." (emphasis added).

Robertson-1 at 912.

In laymans terms, paraphrasing Justice Pariente: "We ARE the Florida Bar. We "interpret" the rules, so we can break them and "court order" you to break them, and because you can't violate a "court order" (another Florida Bar Rule we CHOOSE to enforce unlike this one that is in our way), you are ordered to betray and abandon your client and "represent" our interest." This is truly a non sequitur: "We recognize one rule (court order), but not another (ethics)."

Petitioner asserts this concurring opinion (3 of the 4 majority), and the majority opinion, puts the State courts burden on the back of Petitioner. As the dissent points out, and Petitioner asserts is what the law actually says, it is the State courts burden to "review" all death cases, and that Statute § 921.141(5) (2016) (the opinion and dissent cite the **2013** statute, which was found at section **(4)**), **does not force** an appellant to participate in that "review". The Statute's intent is "review" by the State court of the "judgment" and "sentence"; and the State court has determined that entails "review" as to the "sufficiency" of the evidence of guilt, as well as the "proportionality" of the death sentence by comparing it to other cases of comparable circumstances. Robertson-2, at 1218.

As this Court can clearly see, there is no need for Petitioner to participate in this "review" even if it was mandated by State law (which it is not). By the State court's own admission, it is THEIR job to conduct this "review" for "sufficiency" ("judgment") and

"proportionality' ("sentence"), and NOTHING Petitioner's "counsel" argued "helped" or even "involved" either of these issues the State court "reviewed", and neither did Robertson-2 or even most other death penalty cases. So even if it could somehow be justified to force a defendant to appeal, or Petitioner should say force a lawyer to do it without a client; the 2 things the State court is mandated to "review" - "sufficiency" of the evidence supporting the guilty verdict, and "proportionality" compared to other death penalty cases - PETITIONER HAD NO PART IN AT ALL. The appeal was a farce.

Petitioner would adopt the dissent in Robertson-1, at 913, written by Justice Canady and joined by Justice Polston (Justice Quince dissented without joining an opinion), as speaking for him:

> Whether to "take an appeal" is among the "fundamental decisions" that "the accused [in a criminal case] has the ultimate authority to make." *Jones v. Barnes*, 463 U.S. 745, 751, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983). The accused in a criminal case also has a basic right to a lawyer who is faithful to the ethical requirement of Rule Regulating the Florida Bar 4-1.2(a) that "a lawyer shall abide by a client's decisions concerning the objectives of representation." The majority unjustifiably infringes on Mr. Robertson's right to make the fundamental decision of whether to pursue the appeal of his death sentence as well as his right to a lawyer who will follow the ethical imperative to abide by Mr. Robertson's decision concerning the objectives of representation. I dissent from this infringement of Mr. Robertson's rights. **I.**
> None of the grounds relied on by the majority to justify its decision can withstand scrutiny. The majority falls short in its efforts to find a basis for this decision in the Florida Constitution, the Florida death penalty statute, or the United States Supreme Court's death penalty jurisprudence. Although prior decisions of this Court provide support for precluding the waiver of appeal by a defendant under a sentence of death, none of those decisions rest on a reasoned basis. **A.**
> The Florida Constitution, in article 5, section 3(b)(1), provides a right of appeal to this Court for defendants on whom a sentence of death has been imposed. But the Constitution does not

prohibit waiver of the right of appeal by a competent defendant. Article 5, section 3(b)(1), states that "[t]he Supreme Court. . . [s]hall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution." Nothing in this constitutional provision suggests that a defendant in a death penalty case is precluded from waiving the right of appeal, any more than the provision suggest that parties in cases declaring invalid a state statute or provision of the Florida Constitution are precluded from waiving their right of appeal B.

And nothing in section 921.141(4), Florida Statutes (2013), alters or could alter either the nature of the right of appeal granted by the Florida Constitution or the nature of this Court's jurisdiction. The statutory provision regarding "automatic review by the Supreme Court of Florida" merely recognizes that death cases are directly appealable to this Court and that we have mandatory that is, nondiscretionary jurisdiction over such cases. The statute by no means expressly precludes a defendant from waiving the defendant's right of appeal, and the statutory context provides no basis for reading such a limitation on the rights of defendants into the statue. An automatic appeal is not equivalent to a non waivable appeal. Our decisions precluding the waiver of appeal by a defendant under a sentence of death twists this statutory provision to reach a result that is at odds with the recognized ultimate authority of a criminal defendant to make the decision of whether to take an appeal. *Jones*, 463 U.S. at 751 .C.

Finally, nothing in the jurisprudence of the Supreme Court bars a defendant under a sentence of death from waiving the right to appeal the sentence. The Supreme Court's recognition that the "provision for Appellate review" under state capital sentencing schemes "serves as a check against the random or arbitrary imposition of the death penalty," *Gregg v. Georgia*, 428 U.S. 153, 206, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976), does not entail the denial of an individual defendant's right to decide whether to "take an appeal," *Jones*, 463 U.S. at 751.

Indeed, the Supreme Court's death penalty jurisprudence rests on the recognition that "the Eighth Amendment *guarantees individuals* the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (emphasis added). It is not based on some abstract right of the state to ensure appropriate sentences but on the concrete right of individuals to be free of cruel and unusual punishments. In this case, it is Mr. Robertson's right

> that is at issue, and his decision concerning whether to pursue an appeal to vindicate that right-as well as his right to a lawyer who will support that decision-should not be annulled. Respect for the individual dignity of the defendant requires respect for his decision of whether to pursue an appeal and for his right to a lawyer who will not work against him. **III.**
> A defendant under a sentence of death should not be deprived of basic rights that are afforded to all other criminal defendants. Defense counsel in this case has been placed in an untenable ethical position because Mr. Robertson has not been allowed to waive his right of appeal. I would remand this matter to the trial court to determine whether Mr. Robertson has made a knowing, intelligent, and voluntary waiver of his right of appeal. See *Durocher v. Singletary*, 623 So. 2d 482, 484-85 (Fla. 1993) (holding that a competent prisoner on death row may waive his right to collateral counsel and postconviction proceedings and remanding the case to the trial court for "the trial judge forthwith to conduct a *Faretta [v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975),]-type evaluation of Durocher to determine if he understands the consequences of waiving collateral counsel and proceedings"). If Mr. Robertson has made a knowing, intelligent, and voluntary waiver, this appeal should be dismissed.

Petitioner would also cite "right to waive appeal" cases here, to support that issue.

The Florida Supreme Court at issue here, paradoxically, came to the correct conclusion in this situation, however, only in "collateral appeals". See: Durocher v. Singletary, 623 So. 2d 482 (Fla. 1993), wherein they cite several Federal cases (cited shortly). They stated, "Competent Defendants have the constitutional right to refuse professional counsel and represent themselves, or not, if they so choose[.] If the right to representation can be waived at trial, we see no reason why the statutory right to collateral counsel cannot also be waived." i.d. at 483. If this Court inserts "appellate" for "collateral", there is no difference as BOTH are a "statutory right" under Florida law for capital appellants. They also cite Chief Justice Rehnquist, i.d. at 486, footnote 5, from Lenhard v. Wolft, 443 U.S. 1306, 1312-13 (1979) "however worthy and high minded the

motives [] may be, they inevitably run the risk of making the actual defendant a pawn to be manipulated on a chessboard[.]" (emphasis added). THIS IS EXACTLY WHAT THE STATE COURT IS DOING TO Petitioner! Obviously, when they quote the deep thoughts of esteemed jurists, it "goes in one ear and out the other."

The State court's insistence of FORCING Petitioner sentenced to death to participate actively in a "review" of that sentence, led to: Fundamental error; "Unreasonable determination of the facts"; forced violations of A.B.A. and Florida Bar ethics rules; Due Process violations; violations of Petitioner's Constitutional rights to "remain silent"/"not witness against himself"/"liberty"/"assistance of counsel"/"deny or disparage other rights retained by the people"/"make or enforce any law which abridges the privileges of citizens"/"deny any person of liberty without due process"; as well as the simple right to be heard by a court. This type of "judicial despotism" led to the State court coming to a decision that was not supported by the record whatsoever, and also led to their decision based on completely incorrect facts provided to them by a counsel whom spoke for them, and fraudulently claimed to "represent" Petitioner. That "counsel", upon order of the State court, denied Petitioner any involvement in his appeal whatsoever. And that is why when asked by the court during oral argument questions of great import to that court such as "how close to the signing of the plea deal was [Petitioner's] last suicide attempt" (that question was asked several times by the justices to both counsel and State), as well as questioning as to "who wrote the plea agreement form"; counsel gave completely inaccurate information. Why? Because counsel never consulted with his "client" (Petitioner), so he gave false and totally fabricated information that the State court used to not only base their decision on, but also made Petitioner out to be a liar

when Petitioner truthfully stated (in his "Supplemental Pro Se Brief") that Petitioner wrote the "plea deal for death". "Counsel" falsely told the State court that the State wrote the "Plea Agreement Form", which likely is the reason the State court completely dismissed Petitioner's Pro Se Brief as "meritless", because if Petitioner didn't word the "Plea Agreement", his assertion of the type of "Plea Deal" he made via the specific wording Petitioner used to invoke it, does lose all "merit". "Counsel", through his complete ignorance, screwed his "client".

If Petitioner is to be forced to "appeal", and therefore that "appeal" becomes "a matter of right", then Petitioner has a RIGHT to counsel who represents Petitioner's interests and views, OR his RIGHT to proceed completely Pro Se via Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). As Petitioner explained in his separate "Application For Assignment of Counsel, et. al." to this Court, he has been able to get limited case law, etc. from the prison law library. Therefore, Petitioner will be taking some liberty here by stating that he knows there are case law from this Court and other courts stating an "Appellant" has no "right" to Pro Se status as "appellate courts" are, basically, an invention of the judiciary and not "Constitutionally" covered. If this Court would allow, Petitioner believes in his circumstance this doesn't apply. It should be noted that Petitioner "knows" this Court has made such rulings based on reading such cases while studying Faretta while at the trial court level.

To begin; since death sentences are mandated by the Florida Constitution, Art. 5, sec. 3(b)(1), to be "appealed" to the Florida Supreme Court for "review", a death sentence "appeal" IS CONSTITUTIONAL, and a "matter of right" (That is IF this Court agrees with the State court that it can force a defendant to participate in their required "review",

and that they can take appellant's counsel and make that counsel "represent" the "court's interest").

If that's the case, then this is a different situation than the "other cases" this Court decided where those Appellant's State Constitutions had no such "Constitutional Right" to appeal.

Next; Petitioner does not believe any of "those cases" dealt with a situation where the "appellate court" forced the appellant's counsel to abandon his/her client BY COURT ORDER, and violate a dozen State Bar (and A.B.A) ethics rules on purpose.

Based on that, and the fact Petitioner is a "suspect class", Petitioner is entitled to "equal treatment under the law" which he is being denied. Petitioner either has a "right" to counsel who "represent" Petitioner IN ACTUALITY not in "name only", **OR** the historical right to stand before a court "in proper person" via Faretta. Petitioner has an absolute right to one or the other, otherwise any hearing is a complete farce; a "Kangaroo Court" where any outcome is "suspect" and likely to be full of inaccuracies (just like Petitioner's). The outcome from such a "tribunal" IS UNCONSTITUTIONAL, not legal, and a form of "judicial despotism" that is unacceptable in honest American jurisprudence. It also "erodes public confidence in the judiciary". Who can trust the "system" where the condemned man is tied down and gagged, while a "tribunal" puts on a farcical show where the "court's counsel" FRAUDULENTLY claims "Appellant says...", "Appellant asserts...", et. al. when the actual "Appellant" has nothing to do with THIS because he is gagged, hogtied, and completely ignored?

Petitioner has a very simple solution to this issue (again; only if this Court finds "forced appeals" legal). This is only for the "suspect class" of appellants like Petitioner

and Robertson:

(1) Petitioner's counsel "advises" the State Supreme court that Petitioner is going to present argument as to why his acceptance of the death sentence/guilty plea/plea deal for death is legal. Counsel will then represent his client's views and positions. Upon receipt of this "Notice", the State court will assign "Amicus Curiae" to bring forth any and all information to assist the court in its "review" of the trial court record. For counsel who finds he/she cannot "in good conscience" represent appellant's position, he/she will be permitted to withdraw and the State court will ask the Public Defender to find someone in their office who will represent Appellant's views. Should the Public Defender refuse, then the State court will ask the State Collateral counsel's office to assign counsel. As a last resort, the State court will hire outside counsel to be paid out of the Public Defender's Office budget.

(2) If Petitioner chooses to proceed pro Se, and was not Pro Se for sentencing (as this Petitioner was), the State court will remand the case to the trial court to conduct a Faretta hearing to determine if he is able to proceed pro se (a "competency hearing" in accordance with this Court's ruling in Indiana v. Edwards, 554 U.S. 164 (2008) is also required, of course). If the Petitioner is found to be competent under Edwards, and following the Faretta hearing, the trial court will make this finding in writing and release jurisdiction back to the State Supreme Court. Just as in a regular trial, Petitioner will be required to proceed with Appellate counsel as "standby counsel". In this situation, Appellate counsel cannot motion for withdrawal due to the fact he is not "representing" the Petitioner's views; The State court may also assign "Independent Special Counsel" or "Amicus Curiae" to

assist the State court in its "review." As to "oral argument" (this IS 2018), the State court shall permit Pro Se Petitioner to appear via real-time "video conference", by either a direct link to the prison, or via "Skype" or other real-time video medium (If this Court will not agree to "video" appearance by an Appellant, then "teleconferencing" by phone is available at the prison). If a Pro Se Petitioner is found by the State court to violate the court's rules, such as using profanity, the court may immediately "disconnect" Petitioner by "muting" the receiving device, however Petitioner shall be able to "See" or "hear" the proceedings until the court completes the proceedings.

Petitioner would point out that the State court has trial courts in Florida appoint "Independent Special Counsel" (as was done to Pro Se Petitioner at his sentencing phase) when a pro se defendant does not object to the death penalty and presents no mitigation. It would seem the State court believes in "do as I say, not as I do." So if it's good enough to have trial courts hire "Independent Special Counsel" when a defendant doesn't fight the death penalty, or wants it, then the State court should be required to apply their Constitutionally questionable "Independent Special Counsel" to themselves. United States v. Davis, 285 F. 3d 378, 384 (5th Cir. 2002): "[T]he district court's alleged inherent authority to appoint independent counsel clashes with the Petitioner's Sixth Amendment Faretta rights... the Constitution prevails over any "inherent judicial power" argument." This goes toward "Issue 4" of Petitioner's "Pro Se Supplemental Brief" (Appendix F, pp. 78-81), which the State court refused to address. Should this Court choose to review that issue, Petitioner finds U.S. v Davis supports Petitioner's Pro Se Brief argument as to the un-Constitutionality of the State court violating Petitioner's Pro Se rights via

"Independent Counsel". Petitioner fought it all the way to the end (the State Attorney supported Petitioner's arguments with their own), and the transcripts of the legal arguments at the sentencing court would prove very moving to this Court.

As to the horrendous violation of the State court forcing Petitioner's "counsel" to be an "agent" of the State court against his "client"; to "abandon" his client; to not "consult" his client; and to give false statements to the State court to purposefully or neglectfully cause harm to his "client"; Petitioner would show the State court caused "harm" to the image of the judiciary.

Petitioner would begin by quoting two words from Petitioner's personal "Merriam-Webster's Dictionary of Law (2016)":

(1) due process: **2**: a requirement that laws and regulations [] may not contain provisions that result in the unfair or arbitrary treatment of an individual [.] Fundamental to procedural due process is [] an opportunity to be heard and to defend one's rights to life, liberty[.] It is a safeguard from governmental action that [] is unfair, irrational, or arbitrary in its furtherance of a government interest.

(2) Liberty: **1a**: Freedom from external (as governmental) restraint, compulsion, or interference in engaging in the pursuits or conduct of one's choice to the extent that they are lawful and not harm others. **3**: freedom from subjection to the will of another claiming ownership or services. (emphasis added)

It is quite obvious the State court by "taking" Petitioner's "counsel" from him for their use, then refusing to respect Petitioner's right to "be heard" by ignoring his "Pro Se Brief", CLEARLY violated "due process" by denying Petitioner "an opportunity to be heard **AND** to defend his right to liberty", also the State court used "provisions that

resulted in the unfair and arbitrary treatment of Petitioner".

As to "counsel", that is the most vile attack on Petitioner's "LIBERTY" that can possibly be done to an American citizen. Petitioner was "subjected to the will of another - "counsel"- "CLAIMING SERVICES" ("Representing Appellant"). As to the State court forcing Petitioner to "appeal" "in the way we want", forced Petitioner to "external compulsion" to "engage in a pursuit NOT of his choice". Once in awhile the "definition" of words of GREAT significance and meaning should be viewed, to remind us of their real import, instead of just tossed around. When these "words" are taken from you, as was done to Petitioner, their "meaning" carries a much greater weight to the individual who, as an American, is denied them.

Further, by the State court's usurpation of Petitioner's "counsel" for its own "interests", Petitioner would put forth an argument he has not found in any case: That to use an attorney against his client is a Fifth Amendment violation by forcing Petitioner to "witness against himself" via the attorney acting on behalf of a "governmental entity", i.e., the "State court". This also violated Petitioner's "right to remain silent" under the Fifth Amendment.

As explained above, regarding "Liberty" and "due process" being violated; the Fifth Amendment also entails that: "...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty...without due process of law."

Petitioner would assert, just as he asserted to the sentencing court when he was fighting "Independent Special Counsel"; that an attorney assigned to "act in his best interest" "for your own good" (as if Petitioner were a 2 year old child), puts Petitioner in an awkward position of "fighting himself". As a native born American, I've known nothing

but "freedom" (even in prison), and "liberty" my whole life. Therefore, when communistic slogans are used by courts, as Petitioner's sentencing judge did justifying 'Independent Special Counsel" by stating that Petitioner's strong, and verbally angry protests to the completely utter evisceration of Petitioner's Faretta rights, was somehow unreasonable because "it's for your benefit" (a.k.a the communistic "it's for you own good"); it completely outrages a "freeborn" American like Petitioner.

So Petitioner was not only raped of his name which was fraudulently used by another individual ("counsel"), to say Petitioner "states"/"argues"/"asserts"/"claims" in a case that is now in the legal books FOREVER; but also that "counsel" (acting in Petitioner's name) forced Petitioner ("counsel") to "witness against" Petitioner (in reality). Craig Wall, Sr., IN NAME, was "compelled to testify" (via State court order) to "witness against" Craig Wall, Sr., THE HUMAN, through "subjection to the will of another claiming ownership" of that NAME. There is nothing Constitutional about this.

Petitioner would now cite the **limited** case law he was able to get from the prison law library, to support his assertion that he was "denied counsel" and why this is a Writ this Court should hear (**All emphasis in quotes added**):

Strickland v. Washington, 466 U.S. 668 (1984):

***670** "The principles governing **ineffectiveness claims apply [] on direct appeal**[.][A] State court conclusion that counsel rendered effective assistance is not a finding of fact binding on the federal court [] but is a mixed question of law and fact."

***682** (citing Washington v. State, 693 F. 2d 1243, 1258-1259 (5th Cir. 1982)) "The court observed that only **in cases of outright denial of counsel**, of **affirmative government interference in the representation process**, or of **inherently prejudicial conflicts of interest**

had **this Court** said that **no special showing of prejudice need be made."**

***688** "**Counsel's function** is **to assist** the defendant, and hence **counsel owes the client a duty of loyalty**, a **duty to avoid conflicts of interest**[.] From **counsel's function as assistant to the defendant** derive the **overarching duty to advocate the Defendant's cause** and the **more particular dut[y] to consult with the defendant on important decisions**[.] **Prevailing norms** of practice **as reflected in American Bar Association standards** and the like[] are guides to determining what is reasonable[.]"

***691** "**Counsel's actions** are usually **based, quite properly**, on informed **strategic choices made by the defendant** and **on information supplied by the defendant.**"

***697** '**[T]he ultimate focus on of inquiry** must be on the **fundamental fairness of the proceeding** whose result is being challenged."

Trapnell v. U.S., 725 F.2d 149, 153 (CA2 1983) ("farce and mockery" of court proceedings)

Holland v. Florida, 560 US 631, 130 S. Ct. 2549, 177 L.Ed. 130 (2010):

***148** "A group of teachers of legal ethics tells us that these various failures [of counsel] violated fundamental cannons of professional responsibility, which **require attorneys to perform reasonably competent legal work**[] **to implement clients' reasonable request** [] **and never abandon a client.**

Holland, supra, 149, 155, 160-161 (ALITO, J., concurring in part, concurring in judgment):

***155** "To be sure, the rule that an attorney's acts and oversights are attributable to the client is relaxed where the client has a constitutional right to effective assistance of counsel. **Where a State is constitutionally obliged to provide an attorney** but **fails to**

provide an effective one, the attorney's failures that fall below the standard set forth in Strickland [citation omitted] **are chargeable to the State, not to the prisoner."**

***160-161 "[T]he Constitution does not empower [State] courts to rewrite,** in **the name of equity, rules that [State Legislature] has made. Endowing unelected judges with that power is irreconcilable with our system**, for it would **literally place the whole rights** and property of the community **under the arbitrary will of the judge, arming him with a despotic sovereign authority[.]"**

Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991):

***753 " '[C]ause' under the cause and prejudice test** must be **something external to the Petitioner, something that cannot** fairly **be attributed to him."**

***754 "[I]t is not the gravity of the attorney's error that matters**, but that it constitutes a violation of Petitioner's right to counsel, so that **the error must be seen as an external factor**, i.e., **'imputed to the State'[.]** (as quoted by Justice Alito in Holland, supra, at 150-151).

As Justice Alito opined in Holland, supra, at 152, citing Coleman, supra, at 754, "**Common sense** dictates that **a litigant cannot be held** constructively **responsible for the conduct of an attorney** who is **not operating as his agent in any** meaningful **sense of that word."**

Evitts v. Lucey, 469 U.S. 387, 83 L. Ed. 2d 821, 105 S. Ct. 830 (1985):

***395** "As we have made clear, **the guarantee of counsel 'cannot be satisfied by mere formal appointment'**... Because the right to counsel is so fundamental to a fair [appeal], **the Constitution cannot tolerate [direct appeals** of right] in **which counsel**, though **present in name, is unable to assist the** [Appellant] to obtain a fair decision **on the merits."**

***396** "[N]ominal representation on an appeal as of right -like nominal representation at trial- does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than **one who has no counsel at all. A first appeal as of right** therefore **is not adjudicated in accord with due process** of law if **the Appellant does not have** the effective **assistance of an attorney."**

***405 " 'Equal Protection',...**emphasizes **disparity in treatment by a State between classes of individuals** whose situations are arguably indistinguishable."

Schoenwetter v. State, 46 So. 3d 535, 551 (Fla. 2010):

"To prevail on a claim of ineffective assistance of counsel a claimant must show: (1) that his **counsel's performance** was deficient, i.e., **unreasonable under prevailing professional standards;** and (2) that the **claimant's case was prejudiced by the deficiency**... To meet this second prong, that claimant must show '**a reasonable probability** that, but **for counsel's unprofessional errors, the result of the proceedings would have been different'**... 'A reasonable probability is **a probability sufficient to undermine confidence in the outcome.'** [citations omitted]"

U.S. v. Cronic, 466 U.S. 648, 654 (1984):

"Of all the rights that an [Appellant] has, **the right to be represented** by counsel **is by far the most pervasive** for **it affects his ability to assert any other rights he may have."**

For counsel to not render "**Assistance**" **to** Petitioner, nor "**represent**" **Petitioner's views/interests/issues,** or be **Petitioner's "Advocate", "convert[ed] the appointment of counsel into a sham** and nothing more than a formal compliance with the Constitution's requirement that an accused be given assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment." Cronic, supra,

at 654-655, quoting Avery v. Alabama, 308 U.S. 444, 446, 84 L. Ed. 377, 60 S. Ct. 321 (1940).

The right protected by the Sixth Amendment requires that Petitioner have "counsel acting in the role of an advocate", Anders v. California, 386 U.S. 738, 743, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967).

Most important to the issue at bar here, "To satisfy the Constitution, **counsel must function as an advocate for the [Appellant], as opposed to a friend of the court,"** Jones v. Barnes, 463 U.S. 745, 758 (1983) (BRENNAN, J., dissenting).

Lastly, as to "sham counsel" case law; "**Joint representation of conflicting interests** [Petitioner's and the State court's] **is suspect because of what it tends to prevent the attorney from doing** [representing Petitioner in actuality]." Holloway v. Arkansas, 435 U.S. 475, 489-490 (1978). See also Glasser v. U.S., 315 U.S. 60, 67-77 (1942).

A "**Right**" (to counsel) is not a **millstone** to be **forceably tied around the neck** of American citizens. A "**Right**" is a **CHOICE**; it is "there" to be used **if** needed or wanted, it is **not** a "**compulsory**" edict. Example: "The **RIGHT** to bear arms shall not be infringed." Are Americans **forced** to "exercise" this "**Right**"? Only Switzerland "compels" gun ownership.

The State court committed Fundamental Error, and actual error, in it's judgment based on errorneous information provided to it by so-called "counsel" for Petitioner, based on it's **misguided interpretation** of the mandate that **they** must "review" all capital cases. Due to this, the State court created a **cascade** of Constitutional, liberty, legal and personal rights violations, leading to a communistic style "kangaroo court." The definition of "kangaroo court" being "An irregular tribunal, usually disregarding or parodying existing

principles of law", fits what occurred here. To force counsel, in an **American** court of law, to abandon his client and to become **an "agent" of the court** to present the argument the court wants to hear; is exactly what was done in communist Russia under Joseph Stalin: The "counsel" for Defendants were "yes men" **for the court**; working **for the court**; whereby "The State" was represented by **all** the participants **except the actual defendant**; and where the "counsel" spoke not with/for the defendant nor "represented" the defendant, but instead **spoke on behalf of the court** ("The State"). This is the **antithesis** of **American** jurisprudence, **liberty**, and freedom. In other words; it is completely un-American **in every way.** And that's why it led to a judgment **based on false information** provided by **"counsel" who could not accurately provide information, because he never consulted with Petitioner.** Because "counsel" was ordered to forsake, abandon, and (in his mind) ignore and disregard Petitioner and **instead "represent" the State court's interest; "counsel" was "on his own" to do "whatever he pleased."** HE WAS HIS OWN CLIENT. Therefore, because he **never** consulted with Petitioner about anything, "counsel" was "winging-it" and gave uninformed and totally inaccurate information to the State court, leading to an unjust result based on the State court's "**cleaving**" counsel from his client.

Petitioner foresaw the State court's continuing to ignore Petitioner, while not allowing Petitioner any counsel, see APPENDIX G: Petitioner's **LEGAL** and **AUTHORIZED** filings. The clerk of the State court has **no choice** but to strike **ALL** Pro Se filings in a direct appeal. Based on the State court's ruling in Davis v. State, 789 So. 2d 978 (2001), which orders the clerk of court to "strike" **ALL** Pro Se filings, sight unseen. **Even** Petitioner's "Pro Se Supplemental Brief", authorized by State **court order**, was originally "stricken" by the clerk (Petitioner had to fight with "counsel" to file a

"Rehearing Motion" on that being struck - because if Petitioner filed for rehearing it would just be "struck"- and the State court "Vacated" that **one** "strike"). The State court passing Davis was to purposefully violate a Legislature passed **law** authorizing Pro Se filings: F.S. § 27.711 "Motion to Monitor Performance of Counsel". Petitioner filed that motion he had a legal **right** to be heard on, but it was "stricken" by the clerk also. See dissent in Davis, id. at 982. Davis SILENCES, GAGS, and CHOKES appellants, especially Petitioner whose "counsel" REFUSES to help his "client" (in name only).

When Petitioner's F.S. § 27.711 Motion was **illegally** stricken, Petitioner mailed a letter to ALL 7 State justices, but headlined to Justice Periente as written to her (those letters; "struck" also), because she is the only sitting justice left who "dissented" in Davis. Petitioner begs this Court to read it, as the letter clearly explains exactly how/why Davis was made **specifically to** usurp Legislative powers to pass laws, by passing a court case to "procedurally" deny Appellant's use of that law. The State court violated the "separation of powers" doctrine, as well as denied someone in Petitioner's situation (no counsel) from **all** access to the State court. **Every** Motion in Appendix G was **legal**, and **allowed** under Davis. So the State court not only passes case law to take your attorney from you in order to **conduct** a "sham" proceeding, but also passes case law to order their clerks to "strike" **EVERYTHING,** even filings they **court order** to be allowed. Yeah, this seems "just" and Constitutional, right?

As to Petitioner's "Pro Se Supplemental Brief" ("Brief"), Petitioner asks this Court to review it as to "unreasonable determination of the facts" regarding exactly what **KIND** of "Plea Deal" Petitioner "negotiated". This is not rocket science: **NEVER** in the **HISTORY** of **FLORIDA** jurisprudence has a "Plea Agreement Form" HAD THOSE

WORDS ON IT. **NEVER** has a death eligible defendant **signed a "Plea Agreement Form".** Ever. Further, the ONLY time you need a "Plea Form" is for a **SPECIFIC SENTENCE AGREEMENT**. See Appendix H for the signed "Plea Deal for Death." As Petitioner explained: PETITIONER WROTE THOSE WORDS. "Counsel" told the State court during oral argument, when asked **who** wrote it by a justice, that "the State did". This led the State court to come to a "unreasonable determination" of the **intent** of that "deal for death". That's what you get, inaccurate information, from a lawyer who doesn't "consult" with his client to get accurate information. Another **SERIOUS** inaccurate statement by "counsel" who **didn't know** answers to ANYTHING? When "counsel" was asked **3** times, "When was Mr. Wall's last suicide attempt... how close was it to signing the plea deal?" (the State was asked also, but they didn't know either, the State just repeated "counsel's" date). "Counsel" said, "I believe his last suicide attempt was in **2013**." Actually, Petitioner's **last** "suicide attempt" was a massive overdose of **Thorazine** (Petitioner was hospitalized, intubated, etc.) on exactly December 30, 2014, which is C.J.'s birthday (actually into December 31, 2014 because Petitioner took the pills between 11:58 P.M. - 12:00 A.M.). Petitioner didn't wake up from the overdose until January 3, 2015. Petitioner immediately had his attorney, in January 2015, bring him the Plea Deal form and told the State he was ready to do it. Three hearings were held between that space of the end of January through the hearing where the form was actually signed in open court - February 13,2015. So about 5 ½ weeks from "suicide attempt" (Dec. 30th), to signature on the form (Feb. 13th). Does this Court still think the State court didn't come to an "unreasonable determination of the facts"? **THIS** is exactly what happens when you tell an attorney, "abandon your client, do whatever you want, so long as you represent the

court's interest." It's not like Petitioner didn't **TRY** to talk to the lawyer, Petitioner wrote letters asking to talk on the phone. "Counsel" **REFUSED**. It's the State court's own fault: if they didn't "strike" Petitioner's F.S. § 27.711 "Motion to Monitor Performance of Counsel", and made sure "counsel" "consulted" with Petitioner, the State court wouldn't have **based their decision** on **fabricated** information.

Lastly, if this Court grants this Writ and assigns Petitioner counsel; assigned counsel **will be able** to go get an affidavit from Petitioner's **sentencing** counsel to verify Petitioner's assertions as to **Petitioner** writing the "Plea Agreement Form", as well as the December 30-31, **2014** Thorazine suicide attempt. Petitioner's sentencing counsel, Ronald Kurpiers, II, Esq., spoke to Petitioner in April this year via conference call with Petitioner's "Collateral Counsel". Mr. Kurpiers was the one (See: Appendix F, Pro Se Brief, page 49) who sat next to Petitioner **WATCHING PETITIONER WRITE THE PLEA FORM**, then Mr. Kurpiers took **Petitioner's** rewrite of the States version (Petitioner **struck**-out ALL the State's wording), and the State typed **EXACTLY** what Petitioner wrote. Mr. Kurpiers stated that in the event this Court hears the Writ, he will provide a sworn affidavit attesting to these facts. Now if Petitioner had "counsel" on direct appeal, all this information would have been properly presented to the State court.

CONCLUSION

Petitioner, Craig Wall, Sr., respectfully requests that certiorari review be granted in the interests of justice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, in accordance with 28 U.S.C. § 1746, that under penalty of perjury that the foregoing is true and correct, and that a true copy of this petition has been furnished by United States Mail to: Marilyn Beccue, Assistant Attorney General, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607-7013.

Originally on 23rd day of May, 2018 (Original), and this corrected version.

On this 24th day of July, 2018.

/s/ 

CRAIG WALL, SR.
Pro Se Petitioner

FLORIDA STATE PRISON
Craig Wall, Sr. #140726
P.O. Box 800
Raiford, FL. 32083