No. _____

IN THE

Supreme Court of the United States

JEREMIAH ("JENNA") RODGERS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the First District Court of Appeals for the State of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the newly discovered evidence of a criminal defendant's medical condition, including gender dysphoria, may implicate the voluntariness of a prior plea made by the defendant?

2. Whether a defendant is required, in order to avoid application of a procedural bar, to advance a diagnosis or medical condition that has yet to be fully accepted by the medical community, and which has not been conclusively determined to apply to the defendant?

PARTIES TO THE PROCEEDINGS

Petitioner, Jeremiah ("Jenna")[1] Rodgers, a Florida prisoner, was the appellant in the First District Court of Appeal for the State of Florida.[2]

Respondent, the State of Florida, was the appellee in the First District Court of Appeal.

[1] Petitioner has gender dysphoria, a medical condition characterized by one's gender identity not aligning with the sex assigned at birth. This petition refers to Petitioner by her preferred female name, and with gender-appropriate pronouns, consistent with prevailing medical standards.

[2] Petitioner also has in this Court a pending petition for writ of certiorari arising from her capital case (Case No. 20-5117).

NOTICE OF RELATED CASES

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Underlying Trial:
Circuit Court of Santa Rosa County, Florida
State of Florida v. Jeremiah Martel Rodgers, Case No. 98-CF-322
Judgment Entered: February 2, 2000

Appellate Proceedings:
First District Court of Appeal (Case No. 1D00-0748)
Rodgers v. State, 869 So. 2d 604 (Fla. 1st DCA 2004)
Conviction and Sentence Set Aside: March 1, 2004

Second Trial Proceedings:
Circuit Court of Santa Rosa County, FL
State of Florida v. Jeremiah Martel Rodgers, Case No. 98-CF-322
Motion to Withdraw Guilty Plea Denied: August 3, 2004

Appeal of Order Denying Motion to Withdraw Guilty Plea:
First District Court of Appeals (Case No. 1D04-4404)
Rodgers v. State, 903 So. 2d 941 (Fla. 1st DCA 2005) (affirming)
Judgment Entered: June 10, 2005

Newly Discovered Evidence Proceedings:
Circuit Court of Santa Rosa County, FL
State of Florida v. Jeremiah Martel Rodgers, Case No. 98-CF-322
Judgment Entered: January 2, 2019 (dismissing without prejudice)

Circuit Court of Santa Rosa County, FL
State of Florida v. Jeremiah Martel Rodgers, Case No. 98-CF-322
Judgment Entered: April 30, 2019 (denying 3.850 motion)

3.850 Appeal:
First District Court of Appeals (Case No. 1D19-1965)
Rodgers v. State, 292 So. 3d 434 (Fla. 1st DCA 2019) (affirming)
Judgment Entered: March 11, 2020

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DECISION BELOW

The First District Court of Appeals for the State of Florida's opinion is available at 292 So. 3d 434 (Fla. 1st DCA 2020), and is reprinted at Attachment A.[3] The state circuit court's order denying Ms. Rodger's Rule 3.850 motion is reprinted at Attachment B.

JURISDICTION

The judgment of the First District Court of Appeals for the State of Florida was entered on March 11, 2020. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides, in relevant part:

> In all criminal prosecutions, the accused shall…have the Assistance of Counsel for his defense.

The Eighth Amendment provides, in relevant part:

> Excessive bail shall not be required…nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[3] The following abbreviation will be used to cite to the record in this cause and will be followed by references to page numbers: SPCR. – record from Ms. Rodgers' successive 3.850 motion. Additionally, for ease of this Court's reference, citations to trial-level actions in the noncapital case will include a citation to the docket in which an action appears (as some items were misfiled under the capital docket), followed by a brief descriptor and the date an item was filed to the Comprehensive Case Information System (CCIS).

STATEMENT OF THE CASE

I. Introduction

Jeremiah Rodgers did not want to live. Jenna Rodgers does. Ms. Rodgers' gender dysphoria is undisputed, and although her guilty plea in this case was used to secure a death sentence against her in a capital case being litigated simultaneously, no court has adequately and substantively considered the effect of Ms. Rodgers' gender dysphoria on the competency and voluntariness of that plea.

Throughout Ms. Rodgers' life, she has felt "compelled to wear a mask to hide the fact that everything below the surface is female." SPCR. 89. Yet, until recently, she has not had a context for understanding the implications of those feelings, and believed death was the only avenue to relief from her distress. This is through no fault of Ms. Rodgers—rather, it is because gender dysphoria has not been a well-recognized condition in our society and the diagnosis was not even available to Ms. Rodgers prior to her waivers.

Gender dysphoria was not clinically recognized until 2013, when it first appeared in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V"). SPCR. 120. This new diagnosis as articulated in the DSM-V recognized that gender dysphoria is not interchangeable with being transgender. Before the new diagnostic criteria, the condition of being transgender itself was pathologized and seen as a mental disorder. SPCR. 142. However, in recent years, variations from gender norms have become more widely socially recognized. SPCR. 150. Being transgender is simply one of several variations from traditional binary gender norms. It is not a disorder. SPCR 120.

Gender dysphoria, however, is a disorder that can arise as a result of being transgender. It occurs when a transgender individual experiences distress and dysfunction from being in the wrong physical body. SPCR. 120. This shift in diagnostic criteria is of utmost importance, as it recognizes that the treatment for this distress and dysfunction is not simply to compel one with gender dysphoria to accept the gender identity that traditionally aligns with their biological body. Thus, prior to a 2016 evaluation of Ms. Rodgers—the first time she was evaluated after gender dysphoria became a recognized diagnosis, she had no framework through which to understand her condition, or the impact it had on other aspects of her life, including her capital litigation.

In addition to this clinical shift, several factors arising from Ms. Rodgers' individual background posed a barrier to proper evaluation and diagnosis. Before her incarceration in the instant case, Ms. Rodgers was subjected to lifelong physical, sexual, and mental abuse.[4] She was raised in an environment that adhered to strict gender norms and espoused prejudice against minorities—particularly as it pertained to sexual identity and orientation. SPCR. 79. This environment, as a result of systematic abuse, terror, isolation, discrimination, and lack of education, taught Ms. Rodgers that if she was honest about what she was experiencing,

> [o]thers would not accept those thoughts as anything other than perverse, that [she] would be ostracized and judged, and that [her] life would be further threatened. So [she] kept it inside. The emotional pain and shame

[4] *See, e.g.*, SPCR. 79 (chronicling "harsh beatings" by Ms. Rodgers' "mentally disturbed and erratic mother" and "violent, abusive and racist father"); 79-80 (Ms. Rodgers was forced to have sex with her mother, repeatedly raped by her mother's "johns", and brutally raped as a 16 year-old in an adult prison); 79 (Ms. Rodgers was publicly punished via "emotional debasement, and by frank humiliation," such as being made to wear diapers and wet underwear on her head).

> of living with this inner turmoil, however, fueled [her] self-destructiveness, depression, suicidality and self-mutilation, sense of isolation, fear of harm, and anger.

SPCR 81.[5] As such, "Ms. Rodgers has had to suppress her female identity throughout most of her life[,]" SPCR. 160. She has not, until recently, had a safe and educated space to fully express and process her feelings and gain clarity regarding why she has felt such dissonance with her body, why she felt so unequipped to proceed throughout her life as a biological male, or the significant interplay of this condition—gender dysphoria—with other aspects of her life such as her preexisting psychiatric conditions, and the trauma stemming from her lifelong history of victimization and exposure to bigotry.

This interplay of the extreme distress Ms. Rodgers experienced from being transgender, coupled with her pre-existing vulnerabilities, manifested in self-harm, depression, self-loathing, suicidality—and ultimately in her guilty plea in this case, which was used as an aggravator in her capital case. SPCR. 152, 160, 166, 176, 184. At every prior stage of this case and of Ms. Rodgers' capital litigation, the courts, attorneys, and prior mental health evaluators were unaware that her self-sabotaging behavior—including the decision to plead guilty in this case, knowing it would be used to secure a death sentence against her—stemmed from the complex effect of her undiscovered gender dysphoria. Her gender dysphoria, when viewed in conjunction with her history as a whole, calls into question the validity of her guilty plea in this case and undermines her capital sentence.

[5] *See also* SPCR 80 (discussing the "inherent dangers of expressing these thoughts openly in any environment, including correctional facilities").

II. Factual and Procedural History[6]

A. Initial Trial Proceedings

In 1998, Petitioner was indicted for attempted murder and shooting at or into a building. During this same time period, Petitioner was also facing capital charges in a separate case. *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.). The two cases were inextricably linked—the same prosecution and defense attorneys were assigned to both cases, and Judge Kenneth B. Bell presided over both cases. Although Petitioner was indicted first on the capital charges, the noncapital trial was scheduled to take place first. The State indicated that, should a conviction ensue in the noncapital charges, it would be used against Petitioner as aggravating evidence at the capital trial.

Upon motion by Petitioner's defense team in December 1999—citing paranoia, bizarre behavior, emotional weariness, confusion, hopelessness, and extreme suicidality—Judge Bell ordered evaluations of Petitioner's competency as it pertained to both cases.[7] Petitioner was evaluated by two experts, who presented conflicting findings regarding Petitioner's competency. Dr. Lawrence Gilgun evaluated Petitioner on December 7, 1999. In rendering his conclusions, Dr. Gilgun considered Petitioner's psychiatric hospitalizations prior to 1998 and nearly lifelong history of self-harm and

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[6] To best reflect the fact that Ms. Rodgers' gender dysphoria was undiscovered at the time of her guilty plea and subsequent appeals, the remainder of the Statement of the Case will refer to Ms. Rodgers as Petitioner. Although female pronouns are still used where warranted in this section, it bears reiteration that, at the time of Petitioner's prior trial and appellate proceedings, her gender dysphoria was unknown.

[7] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Dec. 1, 1999) (Motion for Competency Examination); *Id.* (Dec. 1, 1999) (Certification of Counsel); *Id.* (Dec. 6, 1999) (Order).

suicide attempts, including an attempt to shoot herself, an incident in which Petitioner slit her throat, an incident in which Petitioner's wounds required over 100 stitches, and a recent near-death attempt while incarcerated where Petitioner was found in a pool of her own blood and "Life-Flighted" for inpatient hospital treatment due to severe blood loss. Dr. Gilgun reported that "[a]t times [Petitioner] will be compliant with medication, and at other times refuses it." Petitioner discussed a current plan for suicide, and in the short period of time after the evaluation while Dr. Gilgun remained in the jail reviewing notes, Petitioner "pulled out [the sutures from the recent wound], creating bleeding and necessitating transport to the hospital for treatment." Dr. Gilgun opined that Petitioner "continues to make serious suicidal gestures and…is genuinely suicidal" and not competent to stand trial.[8]

Dr. Harry McClaren's evaluation was conducted the following day, while Petitioner was on suicide watch in a medical unit. Dr. McClaren noted Petitioner's tortured history, numerous past and recent wounds, current despondency, apathy, and "bizarre behavior" such as smearing feces all over her body, and characterized Petitioner as suspicious, having feelings of persecution, and posing "an extreme risk for suicide". Dr. McClaren's opinion that Petitioner was competent relied on Petitioner's understanding of the legal process and verbal skills: Petitioner had "no motivation to help [her]self via available legal safeguards" and "wanted to die", yet could explain the

[8] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Dec. 14, 1999) (Psychological Evaluation).

role of courtroom players and the charges against her.[9]

Due to conflicting conclusions regarding Petitioner's competency to proceed, a third competency evaluator, Dr. Scott Benson, was appointed and interviewed Petitioner on December 27, 1999. Dr. Benson noted that Petitioner appeared to go through cycles of symptomatic periods followed by "calm" times. Petitioner had been in a calm period for approximately the past week, explaining: "Some days I want to die and some days I don't" and "Some days I think I can let my lawyers go through the motion of representing me. Then on bad days I might pull out my veins or something." At the time of Dr. Benson's interview, Petitioner did not appear actively suicidal, and more willing to work with her attorneys. However, Dr. Benson stated that "this issue may resurface" closer to trial, and Petitioner would "require careful monitoring".[10]

All three doctors testified at a competency hearing on January 7, 2000. The doctors were in agreement that Petitioner's acts of self-harm were not done for the purpose of malingering or delaying her trials. Dr. Gilgun reiterated that Petitioner was not competent because, as a result of cyclical mental health symptoms, she "is suicidal and [s]he's definitely very much out of control" and could not "relate to [her] attorney appropriately and manifest appropriate courtroom behavior and [ ] testify relevantly". Dr. McClaren testified that he had met with Petitioner the night before his testimony and that Petitioner appeared more depressed than at the time of the evaluation.

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[9] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Jan. 10, 2000) (Forensic Psychological Evaluation 12/8/99).

[10] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Jan. 10, 2000) (Psychological Evaluation 12/27/99).

Although Dr. McClaren opined that Petitioner was competent because she had the capacity to assist her attorneys if she chose to, "it was [her] intention not to tell [her] lawyers some things that might help [her] so that [s]he could expedite the execution process" in the capital case. Dr. Benson testified that a determination of competency is like a snapshot of competency at a particular moment in time, and that competency can come and go. Dr. Benson found Petitioner competent to proceed at the time of the evaluation, but described that Petitioner was in a calm period of her cyclic pattern of self-destruction and acknowledged that Petitioner may have been in an improved state by then as a result of the interviews with Drs. Gilgun and McClaren. Dr. Benson acknowledged that during a heightened period in the cycle of self-harm, Petitioner would not communicate well with any person, including her attorneys.[11]

On January 18, 2000, the trial court ruled that Petitioner was competent to proceed.[12] That same day, defense counsel filed a motion alleging Petitioner's continued "mental disorientation and personal deterioration." The motion detailed that Petitioner spent over seven days in a straitjacket, and cautioned that Petitioner was on the path to becoming "a shambling zombie, a wreck of a person whose deteriorated mental state" would prevent her from assisting in her defense and cooperating with counsel.[13] On February 2, 2000, Petitioner was tried, convicted, and sentenced on the noncapital

[11] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Jan. 7, 2000) (Competency Hearing).
[12] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Jan. 18, 2000) (Order Finding Defendant Competent to Proceed).
[13] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Jan. 10, 2000) (Defendant's Motion to Require Constitutional Incarceration).

charges. The State noticed its intent to use the attempted murder conviction against Petitioner as an aggravating circumstance in the capital case.

On March 9, 2000, defense counsel requested additional competency evaluations, citing recent depositions in which correctional staff provided concerning information regarding Petitioner's self-harm and mental state while in confinement, as well as counsel's own observations of mental deterioration following the conclusion of Petitioner's noncapital trial. Specifically, counsel alleged Petitioner had become increasingly depressed, confused, and had an inability to concentrate, focus, or attend to conversation.[14] Judge Paul A. Rasmussen, who presided over the capital case after the recusal of Judge Bell, ordered another set of evaluations.[15]

Dr. McClaren reevaluated Petitioner on March 20, 2000, noting that Petitioner was in an isolation cell due to continued self-harm attempts, which had again required transport to an off-property hospital in mid-February. Following that incident, Petitioner was placed on two psychotropic medications—an antidepressant and an antipsychotic—which she was intermittently taking at the time of the March evaluation. When Dr. McClaren inquired whether Petitioner believed herself to be competent, Petitioner stated that on "some days I am…some days I'm not" and said she was "competent today." Dr. McClaren noted Petitioner's history of suicidality, but indicated that Petitioner was not actively suicidal at the time of reevaluation.[16]

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[14] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Mar. 9, 2000) (Motion for New Competency Examination); *Id*. (Mar. 9, 2000) (Certificate of Counsel).
[15] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Mar. 22, 2000) (Order).
[16] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Apr. 3, 2000) (Exhibits – Psych Evals).

Dr. Gilgun evaluated Petitioner the next day, and found that while many of Petitioner's actions remained self-defeating, at that time she was not actively suicidal. Dr. Gilgun noted that Petitioner had been placed on psychotropic medication, was taking it "in a purposeful way", and was in a period of relative stability. In finding Petitioner competent at the time of reevaluation, Dr. Gilgun expressed the caveat that continued competency would be dependent on consistent medication and treatment. Dr. Gilgun cautioned that despite the current state of improvement, Petitioner was still unpredictable, had engaged in further self-harm, and while "not currently likely to injure [her]self…it would not at all surprise me if this situation changes." Dr. Benson also evaluated Petitioner on March 21, and despite finding Petitioner competent on that date, expressed disbelief that medication would result in sustained improvement.[17]

Petitioner was found competent after an April 3, 2000, hearing in which Dr. McLeod, the medical doctor tasked with caring for pretrial detainees at the Santa Rosa County Jail, cautioned that Petitioner was severely mentally ill, suffering from psychotic episodes, and was again decompensating in the course of confinement.

As Petitioner's capital trial drew closer, the State offered a plea bargain: in exchange for Petitioner pleading guilty to first-degree murder and other offenses, the State would not argue during the penalty phase that Petitioner was the actual shooter. *Rodgers v. State*, 934 So. 2d 1207 (Fla. 2006). Petitioner entered a guilty plea, and the attempted murder conviction was used as an aggravator to secure her death sentence in

[17] *State v. Rodgers*, No. 1998-CF-274 (Santa Rosa Cty.) (Apr. 3, 2000) (Exhibits – Psych Evals).

November of 2000. *Rodgers v. State*, 3 So. 3d 1127, 1131 (Fla. 2009).

B. 2004 Guilty Plea

In March 2004, the Florida state court set aside Petitioner's conviction and sentence in this case on grounds related to judicial bias. *Rodgers v. State*, 869 So. 2d 604 (Fla. 1st DCA 2004). On May 20, 2004, Judge Rasmussen appointed Laura Coleman as Petitioner's retrial defense counsel. A week later, Petitioner was transported from death row to the Santa Rosa County jail. On June 3, 2004, prior to meeting Ms. Coleman, Petitioner wrote a letter to the Court stating that she wished to plead guilty.[18] Petitioner met with Ms. Coleman for the first time on Friday, June 4, 2004. Ms. Coleman had not conducted any investigation into Petitioner's case, had not spoken to any witnesses, and had not filed any motions. Petitioner's hearing was set for Monday, June 7, 2004.

On Sunday, June 6, 2004, Petitioner attempted suicide. In "a genuine attempt to kill herself", she cut a "large gap[]ing wound" that required her to be rushed to the hospital in an ambulance. SPCR. 152, 210, 263. Less than 24 hours later, on June 7, 2004, she entered the guilty plea in this case and received the same sentence as she had after her conviction in 2000. At the time of her guilty plea, Petitioner's competency had not been assessed in four years. Despite the myriad red flags from Petitioner's past mental health history and the substantial competency issues surrounding her prior trial in this case, Ms. Coleman failed to inform the court of Petitioner's June 6, 2004, suicide attempt. And, despite those red flags, she also failed to present the court with any

[18] *State v. Rodgers*, No. 1998-CF-322 (Santa Rosa Cty.) (June 10, 2004) (Letter to Judge from Defendant).

information pertaining to Petitioner's past psychiatric history, and did not make any effort to request or obtain a competency evaluation.[19]

Upon learning of Petitioner's plea, Mark Olive—the attorney who had represented Petitioner in her successful appeal in this case, and who currently represented her in ongoing appellate proceedings in the capital case—filed a motion to withdraw Petitioner's plea. *State v. Rodgers*, No. 98-322-CF (July 7, 2004). Mr. Olive explained his filing as protective action pursuant to Rule of Professional Responsibility 4-1.14 (b), due to Petitioner's incapacity.

In support of the motion to withdraw Petitioner's plea, Mr. Olive proffered an expert opinion from Dr. Fredderic J. Sautter, Ph.D., which expressed concerns that Petitioner's plea "was influenced by [her] severe mental illness, and may have been influenced by a suicidal wish to die." Dr. Sautter recommended a full competency evaluation, noting that Petitioner had "one of the most extensive histories of suicidal and self-destructive actions I have ever reviewed" and "must be considered very seriously at risk for suicide." Particularly in light of the fact that Petitioner's plea in the attempted murder case was against the advice of her capital attorneys and the use of such a conviction as an aggravator in the capital case, "there is a strong possibility that [Petitioner] was either too psychotic at the time of the guilty plea to understand the

[19] Rule 3.210 of the Florida Rules of Criminal Procedure provides a mechanism for pursuing competency determinations at material stages of a criminal proceeding. Defense counsel may file a written motion asking for the defendant to be examined by experts if counsel has a reasonable ground to believe their client is not mentally competent to proceed. Fla. R. Crim. P. 3.210(b)(1-3). The court, too, may set a hearing of its own accord to determine the defendant's mental condition. *Id*.

proceedings, or [she] understood the legal proceedings to be a suicidal gesture, rather than a rational response to [the] legal situation." *State v. Rodgers*, No. 98-322-CF (July 7, 2004) (Motion to Set Aside Guilty Plea).

The Court struck Mr. Olive's motion, noting that, had the motion been filed by Ms. Coleman or *pro se* by Petitioner, Petitioner would have been entitled to a hearing on the motion. *State v. Rodgers*, No. 98-322-CF (Aug. 3, 2004) (Order). Mr. Olive appealed the decision after appearing *pro bono*, and the state courts affirmed. *Rodgers v. State*, 903 So. 2d 941 (Fla. 1st DCA 2005). After Petitioner's capital sentence was vacated on direct appeal, *Rodgers v. State*, 934 So. 2d 1207 (Fla. 2006), the attempted murder judgment was used as evidence of a prior violent felony aggravator during her resentencing proceedings. Aided by this judgment, the State again secured a death sentence against Petitioner. *Rodgers v. State*, 3 So. 3d 1127 (Fla. 2009).

All of these actions occurred without knowledge of Petitioner's gender dysphoria. As a result, the deciding courts were unaware that there was an undiscovered factor "greatly affect[ing Petitioner]'s mental state, her emotional development, and decision-making" at the time of her plea to offenses that were used as aggravators at her capital resentencing. SPCR. 133.

C. Discovery of New Evidence Regarding Competency

In 2016, after having been appointed counsel for the purpose of vindicating newly recognized constitutional rights in Petitioner's capital case, the Capital Habeas Unit for the Federal Public Defender for the Northern District of Florida ("CHU-N") requested a clinical interview of Petitioner by Dr. Julie Kessel, M.D., who is Board Certified by the

American Board of Psychiatry and Neurology and is familiar with forensic mental health issues in Florida. After her initial meeting with Petitioner, Dr. Kessel reviewed extensive records regarding Petitioner's childhood, developmental years, and incarceration as a juvenile and adult. In 2017, Dr. Kessel expressed a preliminary opinion that Petitioner may have gender dysphoria in addition to posttraumatic stress disorder, major depressive disorder, and a personality disorder not otherwise specified. SPRC. 83. Although Petitioner had been evaluated by medical and mental health professionals throughout her life and at multiple stages of this case and her capital litigation, no one had previously rendered a gender dysphoria diagnosis, nor suggested such a hypothesis to Petitioner.

Because gender dysphoria is an uncommon and easily misdiagnosed condition—even among medical and mental health professionals—and because Dr. Kessel did not specialize in gender dysphoria, Petitioner's counsel retained Dr. George Brown, M.D., who had over thirty years of clinical practice and study regarding transgender health issues (including in forensic and prison settings), and whose contemporary work has particularly focused on gender dysphoria. SPCR. 86-87, 91. Dr. Brown wrote a report in which he provisionally concurred with Dr. Kessel. SPCR. 86-92. However, Dr. Brown could not make a definitive diagnosis to a reasonable degree of professional certainty without further investigation of Petitioner's condition. SPCR. 90.

Diagnosing gender dysphoria is more complicated than diagnosing other medical and mental health conditions. Dr. Brown explained, "[G]ender dysphoric people are over four times more likely to [also] have depressive disorders and nearly three times more

likely to have PTSD . . . . The constellation of these three diagnoses co-occurring is not uncommon." SPCR. 90 (citation omitted). Such comorbidity meant that despite red flags such as Petitioner's attempts at self-mutilation in the form of attempted autopenectomy (cutting off one's penis),

> [m]ental health professionals struggled to accurately diagnose [Petitioner]. This makes sense now, as survey studies have consistently found that those suffering from gender dysphoria have reported higher rates of suicidal ideation, suicide attempts, and stress-related psychiatric disorders. Additionally, those with independent and serious psychiatric disorders (like major depression, bipolar disorder, borderline personality disorder, and schizophrenia) must be adequately treated for those disorders in addition to, and independently of, gender dysphoria.

SPCR. 184. Dr. Kessel spoke to Petitioner's "excruciating pain" and the shame she experienced from being transgender as another complication in diagnosing Petitioner:

> [T]he complexity of [her] inner emotional life and the interconnectedness of [her] mental disorders, and [her] choice to withhold that deeply personal, painful, and shameful reality, left the evaluators with limited information from which to render a full and meaningful assessment.

SPCR. 83. *See also* SPCR. 100 ("The depression is never disconnected from the gender problem"). Another complicating factor is that gender dysphoria is "an uncommon diagnosis with which few otherwise experienced clinicians have any expertise." SPCR. 106. These factors meant that, in 2017, neither Dr. Brown nor Dr. Kessel were able to offer final, complete, or definitive findings as to Petitioner's medical situation and its impact on her plea in this case and the waivers of rights in her capital case. To offer anything other than preliminary opinions would have been professionally unreasonable. And, adding yet another complication, Drs. Kessel and Brown had been specifically tasked with examining Petitioner's competency as it pertained to her *capital*

litigation regarding this Court's decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), and the subsequent Florida Supreme Court decision in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). Petitioner was not represented by counsel in her noncapital case, nor did she have any access to expert services as they pertained to this case.

After providing the preliminary opinions utilized to challenge Petitioner's sentence under *Hurst*, Drs. Kessel and Brown continued to evaluate Petitioner. They reviewed additional records and expert reports, and communicated with Petitioner as she grappled with this new and confusing potential diagnosis. Consistent with scientific understanding regarding gender dysphoria, this process was gradual. *See generally*, Ashley Austin, "There I Am": A Grounded Theory Study of Young Adults Navigating a Transgender or Gender Nonconforming Identity Within a Contest of Oppression and Invisibility, 75 Sex Roles 215 (2016) (detailing "slow and gradual" process of understanding and accepting one's transgender identity); Georgina Mullen & Geraldine Moane, *A Qualitative Exploration of Transgender Identity Affirmation at the Personal, Interpersonal, and Sociocultural Levels*, 14:3 International Journal of Transgenderism 140 (2013) (same); *see also,* J.E. SUMERAU & LAIN A.B. MATHERS, AMERICA THROUGH TRANSGENDER EYES 37 (2019).

Petitioner's awareness of her transgender feelings was "the number one overwhelming thing in [her] life, nothing else compares." SPCR. 99. Having masked and compartmentalized those feelings for so long, Petitioner needed time to process the expert hypothesis that she is transgender, to be educated regarding the gender dysphoria diagnosis, and to consider the implications for her safety that would come from

accepting and publicly admitting to such a diagnosis.

Petitioner was particularly troubled by the latter, stating that if it became publicly known that she was transgender, her life on death row in a male prison would become "worse than a death sentence" and she "just wanted to die rather than continue to live in this body in this place." This concern is supported by studies regarding the experiences of incarcerated transgender individuals, which detail an increased vulnerability to violence, abuse, harassment, and rape. *See* Annette Bromdal et al., *Whole-Incarceration-Setting Approaches to Supporting and Upholding the Rights and Health of Incarcerated Transgender People*, INT'L. J. TRANSGENDERISM, (available at https://www.tandfonline.com/doi/pdf/10.1080/15532739.2019.1651684). The sexual assault rate within correctional settings is nine to ten times higher for transgender individuals than of the general incarcerated population—and significantly more elevated than that for transgender women housed in male prisons. *Id.* This victimization comes from other incarcerated individuals—which correctional staff frequently fail to report or prevent—and directly from correctional staff. *Id.* Incarcerated transgender individuals face intentional misgendering (using incorrect names and pronouns), as withholding of gender-appropriate clothing, grooming items, and medical treatment, and harsh disciplinary punishment for violating gender-related policies (such as dress and grooming standards). *Id.*

To assist Petitioner in working through the complicated concerns that are unique to a gender dysphoria diagnosis, Dr. Brown conducted a clinical interview with Petitioner in November 2017. Having had months to process Dr. Kessel's preliminary

hypothesis, Petitioner—who had previously refused to see Dr. Brown—felt safe enough to speak at length to Dr. Brown about the shame, distress, and suicidality she felt from being transgender. SPCR. 94-107. Petitioner admitted that she had not previously been able to understand her condition, but now having a new lens through which to view her past feelings and experiences, she was able to contextualize and develop insight into her past decisions throughout the litigation process. Specifically, Petitioner understood and expressed for the first time that when she waived her rights, it was done as a suicidal act. SPCR. 103 ("[I] never knew there was a solution…[I] buried myself because I thought the only option [to being transgender] was death").

Still, the diagnostic process was not complete. Dr. Brown noted that Petitioner struggled to fully open up about the extent of her distress, and although he suspected Petitioner inwardly desired identification with female pronouns, she was not comfortable with this while confined in a male prison and requested the use of male pronouns. SPCR. 98. Because of the physical and psychological barriers present in Petitioner's unique situation, Dr. Brown was not yet able to definitively diagnose Petitioner with gender dysphoria.

As Petitioner continued to struggle with expressing aspects of her suspected gender dysphoria, her legal team sought to encourage open disclosure by retaining a female psychologist, Dr. Sara Boyd, PhD., to conduct a clinical interview of Petitioner. SPCR. 109. Dr. Boyd's specialization as a trauma-informed forensic psychologist differs from that of Dr. Kessel, who is a medical doctor, and Dr. Brown, whose specialization is in gender dysphoria. By the time of Dr. Boyd's 2018 interview,

Petitioner had grown more accepting of her condition and reported a desire to be identified with female pronouns, "consistent with her self-identified gender identity." SPCR. 109. Dr. Boyd was able to assist Petitioner in understanding how the symptoms of her gender dysphoria had infused several aspects of her life leading up to—and throughout—her litigation. SPCR. 120-129. Dr. Boyd warned, however, that Petitioner "remain[ed] in need of trauma-informed treatment and gender-related services and [was] continuing to experience related psychological distress." SPCR. 130.

As Petitioner continued to develop insight, she became more able to work with her legal team, including the evaluating experts. By October 2018, Dr. Brown had enough information to conclude his evaluation of Petitioner. SPCR. 104. From his preliminary to final reports, Dr. Brown's professional opinions shifted. He was able to definitively diagnose Petitioner, to a reasonable degree of medical certainty, with gender dysphoria and posttraumatic stress disorder. He added the diagnosis of "[h]istory of psychosis, possibly bipolar disorder" and changed from suspecting personality disorder not otherwise specified to diagnosing Petitioner with antisocial personality disorder. SPCR. 104. Dr. Brown also retracted his prior opinion that Petitioner suffers from major depressive disorder, instead opining that "the depression [Petitioner] experiences is part of [gender dysphoria] and . . . would likely respond to treatments for [gender dysphoria] and not to treatments for depression." SPCR. 105. This finding was of particular significance, given Petitioner's history of unsustained responsiveness to medication, and the conflicting opinions presented by Petitioner's prior competency evaluations.

In the last step of Petitioner's diagnostic journey, Dr. Kessel concluded her

evaluation of Petitioner in November 2018. SPCR. 132. In her final report, she confirmed her prior hypothesis of a gender dysphoria diagnosis and, in accordance with Petitioner's preference, utilized female pronouns and the name "Jenna," as compared to using male pronouns and the name "Jeremiah," as she had in her preliminary report. *Compare* SPCR. 132 with SPCR. 77.

In December 2018, based on the full assessments and conclusions rendered by Drs. Brown and Kessel, as well as other expert opinions and lay witness accounts, Petitioner filed a postconviction motion in the capital case centered on newly discovered evidence of gender dysphoria. Recognizing the impact of this diagnosis on all aspects of Petitioner's life and litigation, Petitioner's capital counsel also filed a postconviction motion in this case, detailing how the impact of Petitioner's gender dysphoria, combined with Petitioner's other mental health vulnerabilities and traumatic life history, rendered Petitioner's noncapital plea invalid and undermined the validity of the death sentence her plea was used to secure in the capital case. [20] *State v. Rodgers*, No. 98-322-CF (Dec. 4, 2018). Petitioner filed an amended motion on March 1, 2019. *State v. Rodgers*, No. 98-322-CF (March 1, 2019). In that motion and its exhibits, Petitioner presented substantial lay and expert evidence that she was not competent during her 2004 proceedings and plea:

- **Dr. Julie Kessel, psychiatrist:** "It was critical that Jenna's competency be assessed in June 2004 before she was permitted to plead guilty to attempted murder. In light of her history and the absence of a contemporaneous competency assessment, I have a substantial doubt as to

[20] Petitioner also raised a claim alleging ineffective assistance of counsel at, and leading up to, Petitioner's 2004 plea, based on Ms. Coleman's failure to investigate readily available red flags regarding Petitioner's competency.

Jenna's competency at the time of her 2004 guilty plea." SPCR. 134.

- **Dr. George Brown, psychiatrist and gender dysphoria specialist:** "Given that this serious medical diagnosis [of gender dysphoria] was not considered in the assessment of JR's competence in the past, it is highly likely that JR was not competent to make knowing and informed decisions in the 2004 noncapital proceedings . . . ." SPCR. 106.

- **Dr. Sarah DeLand, psychiatrist:** "It is shocking to me that Ms. Rodgers was allowed to waive without any sort of evaluation given the amount of documented trauma and mental health history in her background. Even a rudimentary investigation into her history should have been a tip-off to Ms. Rodgers's potential to be incompetent and the need for a competency assessment. . . . I have substantial doubts as to Ms. Rodgers's competency [] at the 2004 guilty plea . . . . As a psychiatrist, I question whether Ms. Rodgers was competent to waive her rights . . . ." SPCR. 185.

- **Dr. Lawrence Gilgun, psychologist:** "It is my professional opinion that the interplay of Ms. Rodgers's medical condition of gender dysphoria, along with her multiple diagnoses, mental illnesses, and trauma, have affected her competency on several occasions. I have substantial doubts as to her competency during her 2004 guilty plea to attempted murder, her 2007 waiver of her jury and mitigation, and 2010-2011 waiver of her state postconviction proceedings. Remarkably, there was no evaluation of Ms. Rodgers at [] her 2004 waiver[], despite ample documentation available to the court and Ms. Rodgers's counsel regarding Ms. Rodgers's self-harm, suicidal attempts, and mental illnesses." SPCR. 152.

- **Dr. Frederic Sautter, psychologist:** "Here, where Ms. Rodgers suffers from mental illnesses, including chronic depression and PTSD, her decisions, including the waiver of her rights in 2004 . . . are put into perspective with the diagnosis of gender dysphoria. As Ms. Rodgers has had to suppress her female identity throughout most of her life, her self-loathing and depression have manifested in harmful ways, including physical self-injury, suicidal ideation, and waiver of rights in various courts. The diagnosis of gender dysphoria reaffirms my belief that Ms. Rodgers needed to be evaluated before being permitted to waive her rights. . . . I have a strong doubt as to Ms. Rodgers's competency at . . . her 2004 . . . waivers." SPCR. 159-60.

- **Angela Mason, clinical social worker:** "Based on my contact with Ms. Rodgers and my knowledge of her life history, I continue to question her capacity to make rational decisions. My concerns are based on her mental health problems, trauma history, and recurring self-destructive behavior

and now her gender dysphoria. At times of high stress, especially, Ms. Rodgers's abilities to protect herself seem to lessen. . . . It is clear to me that after my work, Ms. Rodgers remained ill and continued to suffer. . . . A basic investigation into Ms. Rodgers's history would have raised red flags about her competency due to her long and difficult trauma history, replete with mental illness, suicide attempts, and self-injury. . . . I am very surprised that Ms. Rodgers's traumatic background and mental health history did not prompt her attorneys or the judge to seek an evaluation to assess her competency prior to her guilty plea in 2004 . . . . I have serious doubt as to whether her decision to waive her rights at those junctures would have been knowing, voluntary, or intelligent." SPCR. 142-43.

- **Mark Olive, attorney:** "Gender dysphoria is a missing piece that helps explain how, in addition to her mental illnesses and extensive trauma, many of Jenna's self-loathing actions, especially her attempts at self-castration, came from a place of tremendous pain for living in the wrong body. . . .I believe that the accumulation of Jenna's trauma history, mental illness, and gender dysphoria raise substantial doubts as to whether Jenna's decision[] to plead guilty in 2004 [was] knowing, voluntary, or intelligent. . . . I am concerned that, when Jenna sought to waive her rights, her actions were grounded on her irrational suicidal mindset and lack of capacity to help herself. I am very concerned that her actions were not rational or competent." SPCR. 192.

- **Tivon Schardl, attorney:** "Put together, Jenna's trauma history, mental illness, and gender dysphoria, and the manifestations of them I observed such as her diffidence and lack of self-regard, cause me to have substantial doubts as to whether Jenna's decision[] to plead guilty in 2004 . . . [was] knowing, voluntary, and intelligent." SPCR. 166.

- **Denny LeBouef, attorney:** "I was just recently told . . . that Jenna has been diagnosed with gender dysphoria. Many of the symptoms of this illness are consistent with what I saw in Jenna. She was anxious, nervous, and often depressed. She had extremely low self-esteem. It is certainly believable to me that the pain Jenna suffered from her gender dysphoria was a considerable factor in her self-harming decisions and actions." SPCR. 176.

- **Dr. Kessel:** "As a result of . . . the presence of Gender Dysphoria, a lifelong condition, the absence of any competency and/or mental health evaluation that considered the impact of [Petitioner's] Gender Dysphoria on [her] emotional development, mental state, and decision making at the time of [her] 'waiver,' and given the new understanding of and diagnostic criteria for Gender Dysphoria, there is substantial doubt as to whether [her]

waiver[s] [were] . . . knowing and voluntary." SPCR. 83.

- **Dr. Brown:** Ms. Rodgers' pleas and waivers were "state assisted suicide". SPCR. 91.

- **Dr. Gilgun:** Competency cannot be looked at as a constant or fixed state. A person can be competent at one stage in their life and not at another. . . . [G]iven her history and the [prior] doubts regarding her competency, further evaluations should have been conducted, particularly. . . .when Ms. Rodgers was under the significant stress of legal proceedings and was making decisions that greatly affected her future. SPCR. 152.

- **Dr. Kessel:** Gender dysphoria "greatly affected Jenna's mental state, her emotional development and decision-making at that juncture" of her 2004, 2007, and 2010 waivers. SPCR. 133.

- **Dr. Sautter:** "Competency is fluid, and decision-making competency must be assessed at the moment. The competency determinations made around the time of Ms. Rodgers's original capital trial were not substitutes for evaluations that should have been conducted" at the time of her later waivers. SPCR. 160.

The evidence proffered in Petitioner's postconviction motion demonstrates that Petitioner's newly discovered medical condition impacted this case at each stage of litigation, and serves to invalidate her plea as involuntarily, unintelligently, and incompetently rendered as a result of the impact of Petitioner's gender dysphoria in conjunction with her other mental health conditions.

The circuit court summarily denied relief in an opinion rife with male pronouns, finding that "although Defendant alleges that his claims of newly discovered evidence are timely, the claims were not made within two years of the time the new diagnosis of gender dysphoria was or could have been discovered through the exercise of due diligence" because "Dr. Julie Kessel evaluated Defendant on February 26, 2016 [and] Defendant's original motion was filed…on December 4, 2018." *State v. Rodgers*, No. 98-

322-CF (Apr. 30, 2019). The First District Court of Appeals issued a per curiam order affirming without written opinion. *Rodgers v. State*, 292 So. 3d 434 (Fla. 1st DCA 2019).

In summarily denying on timeliness grounds, those courts failed to address Petitioner's arguments that the challenges to Petitioner's waivers could not have been previously raised, as the newly discovered condition underlying the challenges was not a recognized diagnosis until 2013, Petitioner was not represented by counsel and had no access to experts from 2013 until 2016, and gender dysphoria is a uniquely complicated diagnosis that—despite diligence on the part of Petitioner and her legal team—could not be definitively attributed to Petitioner until late 2018. And, by focusing solely on the time bar and denying Petitioner's motion without an evidentiary hearing, the courts deprived Petitioner of an opportunity to show how the presence and impact of gender dysphoria in addition to Petitioner's pre-existing mental health diagnoses was not simply a psychological redundancy, but an exacerbating condition that worked in conjunction with the previously known conditions to render Petitioner incompetent at the time she waived her rights.

REASONS FOR GRANTING THE WRIT

This Court has jurisdiction to hear Ms. Rodgers' case, because it presents an important question of federal law and the state court's grounds for denying Ms. Rodgers' claim were not "adequate" to support the judgment and "independent" of federal law. *See Michigan v. Long*, 463 U.S. 1032 (1983).

I. This Case Presents an Important Issue of Federal Law, and the State Court's Grounds for Denying Ms. Rodgers Access to the Courts Were Not Adequate to Support the Judgment or Independent of Federal Law.

A. The State Time Bar Was Incorrect.

Ms. Rodgers' case involves important federal constitutional challenges to the validity of her guilty plea. Ms. Rodgers filed in state court within two years of the date upon which the basis for challenging her guilty plea—namely, her previously undiagnosed and untreated gender dysphoria—could reasonably have been discovered. The trial court summarily dismissed Ms. Rodgers' claim as time-barred, asserting that Ms. Rodgers should have filed earlier because "Dr. Julie Kessel evaluated Defendant on February 26, 2016" and "Defendant's original motion was filed more than two years and nine months [later] on December 4, 2018." *State v. Rodgers*, 98-CF-322 (April 30, 2019) (Order); *see also Rodgers v. State*, 292 So. 3d 434 (Fla. 1st DCA 2019) (affirming without opinion). This reasoning is incorrect.

1. Gender dysphoria was not a recognized diagnosis at the time of Ms. Rodgers' guilty plea.

Prior to 2013, individuals who identified with a gender different than the one assigned to them at birth were diagnosed with gender identity disorder. This changed with the publication of the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), which eliminated the diagnosis of gender identity disorder, and added gender dysphoria. The change was not a simple renaming of interchangeable diagnostic criteria. Rather, it was a recognition that gender dysphoria is a wholly different condition than gender identity disorder.

The removal of gender identity disorder from the DSM-V and identification of gender dysphoria was a "reconceptualization" that made "important clarifications in the criteria" for a diagnosis, in order to "better characterize the experiences" of affected individuals.[21] Most importantly, gender dysphoria did not pathologize gender nonconformity as had gender identity disorder. In other words, the DSM-V recognized that being transgender itself is not a psychiatric condition.[22] Instead, the psychiatric condition is defined by clinically significant distress and functional impairment that some transgender individuals experience as the result of their assigned gender not aligning with their identity.[23]

Gender dysphoria is a condition that disproportionately impacts transgender individuals,[24] but not all transgender people have gender dysphoria. By removing gender identity disorder from the DSM-V, medical professionals hoped to destigmatize the state of being transgender. At the same time, by classifying gender dysphoria as a psychiatric condition, medical professionals recognized the suffering experienced by some transgender individuals, including anxiety, depression, refusal to participate in socially-

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[21] Kenneth J. Zucker, Anne A. Lawrence, & Baudewijntje P.C. Kruekels, *Gender Dysphoria in Adults*, 12 Annu. Rev. Clinical Psychol. 217, 223 (2016), https://pubmed.ncbi.nlm.nih.gov/26788901/ (last accessed July 28, 2020).

[22] Am. Psychiatric Ass'n, *Gender Dysphoria*, *1 (2013),* https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf (last accessed July 28, 2020); *See also* Zucker, *supra* note 223.

[23] Am. Psychiatric Ass'n, *supra* note 1; *See also* Zucker, *supra* note 223.

[24] Gender dysphoria primarily affects transgender individuals, but can also occur in individuals who are non-binary or intersex. *See* https://www.nhs.uk/conditions/gender-dysphoria/ (last accessed June 15, 2020).

expected situations (such as school or work), self-harm, and suicidal behavior.[25] Importantly, the diagnosis of gender dysphoria recognizes that the suffering is treatable without stripping someone of their transgender identity.

The emergence of gender dysphoria as a diagnosis signaled a functional shift in the way medical professionals—and our society in general—view transgender issues. Under this new framework, transgender individuals are no longer seen as inherently disordered, and treatment for gender dysphoria focuses on eliminating the distress of a mismatch between one's biological sex and gender identity (often by helping the transgender person to live as their preferred gender) rather than attempting to repress the individual's identity and force them to live incongruently with how they feel.

Ms. Rodgers was fully without counsel or access to expert evaluations from the time of her 2010 postconviction waiver in the capital case, *Rodgers v. State*, 104 So.3d 1087 (Table) (Fla. 2012) (affirming discharge of postconviction counsel), until the appointment of capital federal counsel on November 11, 2015. She was without counsel authorized to litigate in state court until August 24, 2016. And, postconviction counsel was not appointed for Ms. Rodgers in this case until after capital counsel had already protectively filed the postconviction motion alleging gender dysphoria. This means that for years after the emergence of gender dysphoria as a diagnosis, Ms. Rodgers was not in a position to discover and raise her diagnosis.

[25] *See* http://www.mayoclinic.org/diseases-conditions/gender-dysphoria/symptoms-causes/syc-20475255?p=1 (last accessed June 15, 2020).

2. The experts assisting Ms. Rodgers could not have rendered their conclusions any earlier than they did.

The state court decisions overlooked Ms. Rodgers' arguments that, for purposes of beginning the two-year clock for a claim based on newly discovered evidence uncovered by a mental health expert, the triggering date must be the date of the expert's conclusion (often designated in a finalized report), not the date of the expert's initial evaluation. A clinical interview alone was insufficient for a thorough and comprehensive assessment of Ms. Rodgers' condition; instead, the relevant medical guidelines dictate that a reliable mental health assessment incorporates collateral information from multiple sources.[26]

Gender dysphoria is a unique condition that requires particular diagnostic nuance and thoroughness. The DSM-V's reconceptualized diagnostic criteria "caution[ed] against a hasty diagnosis with the potential unintended consequence of inappropriate treatment for clients[.]"[27] It would have been professionally unreasonable for Ms. Rodgers' experts to render conclusions prior to when they did so, and it would have been contrary to good faith and judicial economy for Ms. Rodgers to have filed a newly discovered evidence claim prior to such conclusions. Ms. Rodgers filed her newly discovered evidence claim well within two years of the date upon which her experts were able to render a diagnosis to a reasonable degree of medical certainty. Thus, the state time bar was inappropriate.

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[26] *See* American Academy of Psychiatry and the Law, "Practice Guidelines for the Forensic Assessment," at S3, S8-9 (available at http://www.aapl.org/docs/pdf/Forensic_Assessment.pdf) (last accessed June 15, 2020).

[27] Kenneth J. Zucker, Anne A. Lawrence, & Baudewijntje P.C. Kruekels., *Gender Dysphoria*, 12 Ann. Rev. Clinical Psychol. 217, 223 (2016) (last visited July 28, 2020).

Although Ms. Rodgers' evaluating expert, Dr. Kessel, M.D., provided a January 2017 "initial report"[28] suggesting that Ms. Rodgers may be suffering from gender dysphoria, that report alone did not constitute a reasonably certain diagnosis sufficient to raise a good-faith claim based on newly discovered evidence. For one thing, gender dysphoria "is an uncommon diagnosis with which few otherwise experienced clinicians have any expertise." SPCR. 91. In this unique situation, once the initial observation of gender dysphoria was raised, further evaluation was necessary by a clinician specializing in gender dysphoria.[29]

Dr. George Brown, M.D., has specialized in clinical practice and study of transgender health issues for over 30 years, with a particular focus on gender dysphoria. Dr. Brown is a longtime member of the Board of Directors of the World Professional Association for Transgender Health (WPATH) and authored several standards of care used by medical practitioners worldwide to evaluate and treat gender dysphoria. Additionally, Dr. Brown has extensive experience working with incarcerated individuals with gender dysphoria and other transgender health concerns. SPCR. 86-87. When he

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[28] SPCR. 132.

[29] While Dr. Kessel's observations would have necessitated an additional evaluation by a clinician specializing in gender dysphoria in any similarly situated case, that need was especially pronounced here. Ms. Rodgers has previously self-reported malingering in order to manipulate her proceedings. *See, e.g.*, SPCR 116. Due to this prior claim of malingering by Ms. Rodgers, it was imperative that any diagnosis—particularly one as uncommon and significant to Ms. Rodgers' legal proceedings as gender dysphoria—be examined carefully and confirmed by someone with extensive expertise in the field. Had Ms. Rodgers' attorneys not sought additional evaluations to confirm Dr. Kessel's initial assessment, her attorneys would have left Ms. Rodgers vulnerable to an argument by opposing counsel that Ms. Rodgers was malingering, or that her claim of gender dysphoria and its impact on the voluntariness of her plea and waivers was refuted by the state court record.

reviewed Dr. Kessel's initial report in early 2017, he concurred that it was likely correct, but could not confirm the gender dysphoria diagnosis. SPCR. 91-92. At that point in time, Dr. Brown had only reviewed Ms. Rodgers' records, and had not conducted an in-person evaluation. After conducting that evaluation and reviewing further records under the appropriate medical standards articulated by WPATH, Dr. Brown was finally able to render a conclusive diagnosis of gender dysphoria on October 16, 2018. SPCR. 104.

Additionally, rendering a reasonably certain medical diagnosis of gender dysphoria is a much broader task than determining whether someone's biological sex aligns with their preferred gender. As discussed earlier, being transgender is not the same as suffering from gender dysphoria. Not everyone who is transgender will experience the level of distress or impaired psychological and external functioning that is crucial to a gender dysphoria diagnosis. Thus, a diagnosis of gender dysphoria turns not simply on whether someone is transgender, but on whether someone is suffering from a particular form of distress or impaired functioning as a result, and rendering a diagnosis of gender dysphoria requires excluding other psychiatric conditions as the source of distress or impaired functioning. SPCR. 120.

Ms. Rodgers has a history rife with trauma and multiple psychological diagnoses,[30] and before rendering a reasonably certain diagnosis of gender dysphoria, her evaluating experts needed time to ensure that the symptoms of her gender dysphoria

[30] From 1999 to 2017, Ms. Rodgers has received multiple diagnoses, including Adjustment Disorder, Bipolar Disorder, Impulse Control Disorder, Post-Traumatic Stress Disorder, Personality Disorder NOS, Borderline Personality Disorder, Antisocial Personality Disorder, Major Depressive Disorder, Substance Abuse, Anxiety, Schizophrenia, Dysthymia, Psychosis, and Paranoid Delusional Disorder.

were not attributable to those other conditions and experiences. This required close attention to Ms. Rodgers' state of mind over an extended period of time, as well as careful research into her life history. Such assessment is further complicated by the fact that comorbid mental health disorders, especially mood and anxiety disorders, are significantly more prevalent in individuals with gender dysphoria than in the general population.

Additionally complicating matters was the barrier to open and effective expert communication posed by Ms. Rodgers' incarceration throughout the process of her evaluation. Unlike many individuals seeking diagnosis and treatment for gender dysphoria, Ms. Rodgers was confined by the logistics of being incarcerated. She could not simply schedule an appointment with an expert practitioner at her leisure; nor could she communicate by phone or email the way non-incarcerated individuals seeking diagnosis and treatment could do. And, Ms. Rodgers was further hindered by the fear of maltreatment inherent to her incarceration in a male prison. These factors extended the length of time necessary for Drs. Brown and Kessel to reach a definitive diagnosis.

Ms. Rodgers' treating experts had the arduous and time-intensive task of attempting to qualify whether Ms. Rodgers' suicidality and self-harming behavior resulted from her gender dysphoria (which would constitute a good-faith basis for pleading a constitutional challenge to the validity of her guilty plea based on newly discovered evidence of her gender dysphoria), or whether her self-destructive decisions were satisfactorily attributable to Ms. Rodgers' other mental health conditions previously known to the court (which would defeat a newly discovered evidence claim.)

Consistent with their professional guidelines, which required thorough and deliberate research, data gathering, and corroboration, the conclusions of Drs. Brown and Kessel were finalized and memorialized in October and November 2018, respectively. Ms. Rodgers filed her newly discovered evidence claim in state court in December 2018—well within one year of the finalized reports.

B. The State Courts' Knowledge of Ms. Rodgers' Co-Morbid Mental Health Conditions at the Time of Her Guilty Plea Does Not Invalidate Her Constitutional Challenges Based on Newly Discovered Evidence of Her Gender Dysphoria.

Gender dysphoria is not simply a superfluous name for the same symptoms known to the trial court when Ms. Rodgers entered her guilty plea. It is a distinct diagnosis, promulgated because it is qualitatively different than other conditions involving depressive and self-destructive symptoms. Ms. Rodgers' symptoms cannot properly be evaluated without understanding the context of her underlying gender dysphoria. Indeed, if other conditions such as her previously diagnosed mood and personality disorders could properly explain her symptoms, there would have been no need to promulgate a separate diagnosis in the DSM-V to "better characterize [Ms. Rodgers'] experiences".

Diagnostic classifications matter, because the underlying cause of symptoms matters. Understanding the condition responsible for behaviors is critical, because behaviors do not occur in a vacuum, and without understanding the impetus, an individual's state of mind can easily be misjudged. For instance, the external symptoms of Child Traumatic Stress are frequently the same as the symptoms of Attention Deficit Hyperactivity Disorder. However, the treatments are entirely different. If an assessment

of that child's condition proceeded without understanding the underlying cause of the symptoms, the child could easily be misdiagnosed and treatment would be ineffective.[31] In Ms. Rodgers' case, had the courts known of her untreated gender dysphoria, they would have had an entirely different lens through which to view her self-destructive symptoms. That lens would have included information such as that individuals comprising a "sexual minority" are more disposed to suicide than their non-sexual minority peers.[32] The courts would have had the benefit of knowing that even within the sexual minority subset, a disproportionate number of transgender individuals will attempt suicide.[33] The courts would have known that the number jumps to 46% of transgender individuals attempting suicide when they come—as Ms. Rodgers did—from families with "restrictive attitudes toward sexuality[.]"[34] And, the courts would have known that the rate of suicidal ideation in individuals with *gender dysphoria* (as opposed to transgender individuals overall), the rate of suicidal ideation is further elevated.[35] With this knowledge, the courts would have been more likely to recognize Ms. Rodgers' guilty plea for what it was—a suicide attempt via legal process. This likelihood

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[31] *See* National Child Traumatic Stress Network, "Is It ADHD or Child Traumatic Stress? A Guide for Clinicians" at 6 (available at https://www.nctsn.org/sites/default/files/resources//is_it_adhd_or_child_traumatic_stress.pdf) (last accessed July 28, 2020).

[32] *See* https://www.cdc.gov/violenceprevention/suicide/fastfact.html (last accessed June 15, 2020).

[33] A. Hass et. al., *Suicide Attempts Among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey* (*available at* http://www.suicideinfo.ca/resource/siecno-20140036/) (last accessed June 15, 2020).

[34] Sahika Yuksel et al., *A Clinically Neglected Topic: Risk of Suicide in Transgender Individuals*, 54:28 ARCH. NEUROPSYCHOLOGY (2017).

[35] Elena Garcia-Vega et al., *Suicidal Ideation and Suicide Attempts in Persons with Gender Dysphoria*, Vol. 30:3 283 PSCIOTHEMA (2017).

undermines the reliability of her plea and the death sentence it was used to secure, and necessitates correction by this Court.

Ms. Rodgers' proffered expert reports make clear that symptoms arising from gender dysphoria cannot be treated as interchangeable with symptoms of similar presentation arising from other disorders. Dr. Kessel expressed "substantial doubt"[36] that the waiver was valid, a conclusion largely based on the fact that the trial court—which was aware that Ms. Rodgers had a history of self-harm and suicidality—lacked awareness of the impact of gender dysphoria on Ms. Rodgers' emotional development and mental state. Drs. Kessel and Brown found that the effect of gender dysphoria was critical and distinct from Ms. Rodgers' other mental health conditions, including Post Traumatic Stress Disorder and mood and personality disorders.[37] Further, Dr. Kessel was aware that several of Ms. Rodgers' mental health symptoms (including self-mutilation and suicidality) were on record at the time of Ms. Rodgers' plea, but explained that gender dysphoria casts those symptoms in a new light.[38] Dr. Kessel specifically found that "the absence of any competency and/or mental health evaluation *that considered the impact of [Ms. Rodgers'] Gender Dysphoria* on [Ms. Rodgers'] emotional

[36] SPCR. 79; *see also* SPCR. 90 (describing the symptoms of gender dysphoria as "life-permeating" and distinct from those of other psychiatric disorders).
[37] SPCR. 83; *see also* SPCR. 90 (Dr. Brown examines how Ms. Rodgers' feelings of shame, disgust, and self-loathing are closely woven with her diagnosis of gender dysphoria).
[38] SPCR. 82 (gender dysphoria "has been an important part of [Ms. Rodgers'] psychological development as well as being a serious risk factor for the development of each of [her] other disorders"); *see also* SPCR. 121 ("Ms. Rodgers' Gender Dysphoria symptoms interact with her trauma-related symptoms, and are probably inextricable").

development, mental state, and decision making at the time of [her guilty plea]" was sufficient to undermine their validity. SPCR. 79.

The lower courts' summary denial on timeliness grounds misunderstands the science of gender dysphoria, disenfranchises Ms. Rodgers' rights to access to the courts, and shows a fundamental crack in our criminal justice system through which transgender individuals are vulnerable to falling. The only remedy that can protect Ms. Rodgers' rights to due process, reliable and individualized sentencing, and equal protection within the criminal justice system, is a remand to the lower courts for an evidentiary hearing in accordance with Florida law,[39] in which Ms. Rodgers may present evidence of how the circumstances surrounding her untreated gender dysphoria rendered her prior waivers involuntary.

CONCLUSION

This Court should grant a writ of certiorari to review the decision below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail to Charmaine M. Millsaps, Senior Assistant Attorney General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050, on August 7, 2020.

/s/ LINDA McDERMOTT
LINDA McDERMOTT
Counsel of Record

[39] *See Gaskin v. State*, 737 So. 2d 509, 516 (Fla. 1999) ("While the postconviction defendant has the burden of pleading a sufficient factual basis for relief, an evidentiary hearing is presumed necessary absent a conclusive demonstration that the defendant is entitled to no relief.").

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AUGUST 6, 2020

ATTACHMENT B

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1965

JEREMIAH RODGERS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Santa Rosa County.
John F. Simon, Judge.

March 11, 2020

PER CURIAM.

AFFIRMED.

OSTERHAUS, JAY, and TANENBAUM, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Linda McDermott of McClain & McDermott, P.A., Estero, for Appellant.

Ashley Moody, Attorney General, and Charmaine M. Millsaps, Assistant Attorney General, Tallahassee, for Appellee.

ATTACHMENT A

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **Case No: 1998-CF-0322**

JEREMIAH MARTEL RODGERS,

Defendant.

FINAL ORDER DISMISSING DEFENDANT'S AMENDED MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE is before this Court on Defendant's "Second Amended Motion for Postconviction Relief from Conviction Forming Basis for Capital Aggravator in Light of Newly-Discovered Evidence" filed by and through counsel on March 1, 2019, pursuant to Florida Rule of Criminal Procedure 3.850. Having reviewed Defendant's motion, the State's response, the record, and applicable law, this Court finds as follows:

In 1998, the State filed an information charging Defendant with attempted first-degree murder (Count 1) and shooting, into, or within a building (Count 2).[1] In 2000, following a multi-day trial, a jury found Defendant guilty as charged on both counts. This Court adjudicated Defendant guilty and sentenced him to concurrent terms of 161 months in prison with a three-year minimum mandatory term.

[1] Exhibit A, Information.

Defendant appealed his judgment and sentence to the First District Court of Appeal in case number 1D00-0748, but shortly thereafter the First District dismissed the appeal for failure to pay filing fee or provide indigency order. In 2002, after Defendant filed a successful petition for belated appeal, the First District reinstated the appeal. In 2004, the First District issued an opinion reversing Defendant's judgment and sentence and remanding for a new trial.

On June 7, 2004, Defendant pled guilty as charged on both counts. In exchange, the State recommended that this Court re-impose the original sentence. Following an extensive plea colloquy with Defendant, this Court accepted Defendant's plea as freely and voluntarily entered, adjudicated him guilty, and re-imposed the original sentence.[2]

On July 7, 2004, *appellate counsel* filed a motion to withdraw plea alleging that Defendant was not competent at the time he entered the plea.[3] On July 8, 2004, the State filed a response to the motion and asserted that, although there could be no doubt that Defendant had a history of mental disorders, there was no indication that he was not competent when he entered the plea.[4] On July 23, 2004, trial counsel filed a motion to strike and similarly asserted that there was no indication that Defendant was not competent when he entered the plea and that he was well aware of the consequences of doing so. Trial counsel also asserted that Defendant was not requesting to withdraw his plea.[5] On August 3, 2004, this Court entered an order striking the motion because it was not filed by trial counsel or Defendant. With respect to Defendant's competency, this Court noted,

> Without ruling upon the merits of the motion, this Court did not observe anything about the Defendant which would lead the Court to believe that the Defendant was not competent at the time he entered his plea on June 7, 2004. The Court has

[2] Exhibit B, Plea and Sentencing Hearing Transcript, pp. 4-14, 18-20; Exhibit C, Sentence Recommendation; Exhibit D, Judgment and Sentence.
[3] Exhibit E, Motion to Set Aside Guilty Plea (without exhibits).
[4] Exhibit F, State's Response to Motion to Set Aside Guilty Plea.
[5] Exhibit G, Defendant's Motion to Strike.

> observed Mr. Rodgers many times in the past and is aware that notwithstanding prior self-mutilating acts, he was determined to be competent. There was nothing that occurred during the plea colloquy on June 7, 2004, that leads this Court to believe that Mr. Rodgers was not competent or that he was not fully aware of his plea and/or ramifications resulting therefrom. Had the Court seen any evidence that the Defendant's competence was at issue, it would not have proceeded with the plea colloquy and sentencing.[6]

Defendant appealed his judgment and sentence to the First District in case number 1D04-4006. On June 10, 2005, the First District *per curiam* affirmed Defendant's judgment and sentence. On June 28, 2005, the First District issued the mandate.

On June 28, 2007, Defendant's judgment and sentence became final. *See Breland v. State*, 58 So. 3d 326, 327 (Fla. 1st DCA 2011). On December 4, 2018, more than 11 years and 5 months later, Defendant initiated these postconviction proceedings by filing his "Motion for Postconviction Relief from Conviction Forming Basis for Capital Aggravator in Light of Newly Discovered Evidence." On January 2, 2019, the Court entered an "Order Dismissing Defendant's Motion for Postconviction Relief." The Court found that the motion did not comply with the content requirements of rule 3:850(c) or the certification requirements of rule 3.850(n). The Court dismissed the motion with leave to amend. The instant motion followed.

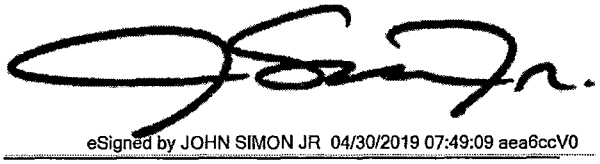
Generally, a motion for postconviction relief must be filed within two years after the defendant's judgment and sentence become final. *See* Fla. R. Crim. P. 3.850(b). Such a motion may be filed outside the two-year time period prescribed if it sufficiently alleges a claim of newly discovered evidence. *See* Fla. R. Crim. P. 3.850(b)(1). To do so, a defendant must allege that (1) the facts on which the newly discovered evidence claim is predicated were unknown to the defendant or trial counsel and could not have been ascertained by the exercise of due diligence, and (2) the claim was made within two years of the time the new facts were or could have been discovered with the exercise of due diligence.

[6] Exhibit H, Order Striking Motion to Set Aside Guilty Plea.

In the instant motion, although Defendant alleges that his claims of newly discovered evidence are timely, the claims were not made within two years of the time the new diagnosis of gender dysphoria was or could have been discovered through the exercise of due diligence. Dr. Julie Kessel evaluated Defendant on February 26, 2016.[7] Defendant's original motion was filed more than two years and nine months on December 4, 2018.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's "Second Amended Motion for Postconviction Relief from Conviction Forming Basis for Capital Aggravator in Light of Newly-Discovered Evidence" is **DISMISSED WITH PREJUDICE**. Defendant has the right to appeal within 30 days of the rendition of this order.

DONE AND ORDERED in Chambers at the Santa Rosa County Courthouse, Milton, Florida.



eSigned by JOHN SIMON JR 04/30/2019 07:49:09 aea6ccV0

JOHN F. SIMON, JR.
CIRCUIT JUDGE

JFS/cl

[CERTIFICATE OF SERVICE ON NEXT PAGE]

[7] Defendant's Exhibit 1, Report of Dr. Julie Kessel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Final Order Dismissing Defendant's Amended Motion for Postconviction Relief was furnished via regular U.S. Mail (unless otherwise indicated) to:

Terri L. Backhus
Chief, Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 North Bronough Street, Suite 4200
Tallahassee, Florida 32301-1300
terri_backhus@fd.org

Charmaine M. Millsaps
Senior Assistant Attorney General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050
capapp@myfloridalegal.com
charmaine.millsaps@myfloridalegal.com

Clifton Drake
Assistant State Attorney
151 Cedar Avenue
Crestview, Florida 32536-2707
cdrake@osa1.org
cweeks@osa1.org

this 15th day of May, 2019.

Close

DONALD C. SPENCER, Clerk of Court

BY: _____
Deputy Clerk

Exhibit A

Case Number **98-000322A-CF-B.** Arrest Date **05/26/98** Agency Report # **98015916A**

RACE: **W** SEX: **M** DOB: **04/19/77**

1) **ATTEMPTED FIRST DEGREE FELONY MURDER**
2) **SHOOTING AT, INTO OR WITHIN A BUILDING**

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA
IN THE CIRCUIT COURT OF SANTA ROSA COUNTY, FLORIDA

FILED
SANTA ROSA COUNTY
CLERKS OFFICE
JUN '24 3 29 PM '98

STATE OF FLORIDA,

vs.

JEREMIAH MARTEL RODGERS,

CURTIS A. GOLDEN, State Attorney for the First Circuit of Florida, prosecuting for the STATE OF FLORIDA, charges that **JEREMIAH MARTEL RODGERS, on or about March 29, 1998,** at and in Santa Rosa County, Florida, did unlawfully from a premediated design to effect the death of a human being; to-wit: **Leighton Smitherman,** did attempt to kill and murder said **Leighton Smitherman** by shooting him with a .380 pistol and did in the process, use carry or possess a weapon, towit: **a .380 caliber pistol,** in violation of Sections 782.04 and 777.04 Florida Statutes. **(LF-L10)**

COUNT 2: And your informant aforesaid, prosecuting as aforesaid, on his oath aforesaid, further information makes that **JEREMIAH MARTEL RODGERS, on or about March 29, 1998,** at and in Santa Rosa County, Florida, did unlawfully, wantonly or maliciously shoot **at, into, or within** a building, located at **3941 Luther Fowler Road, Pace,** in violation of Section 790.19, Florida Statutes. **(F2-L6)**

STATE OF FLORIDA
COUNTY OF SANTA ROSA

Before me personally appeared the undersigned designated Assistant State Attorney for the First Judicial Circuit of Florida, being personally known to me, and who first being duly sworn, says that the allegations set forth in the foregoing information are based on facts that have been sworn as true, and which if true, would constitute the offense there charged, that said Assistant State Attorney has received testimony under oath from a material witness or witnesses for the offense and that this prosecution is instituted in good faith.

Assistant State Attorney for the First Judicial Circuit
JOHN A. MOLCHAN
Florida Bar No: 0747580

Sworn to and subscribed before me this 24th day of June, 1998.

Notary Public

OFFICIAL NOTARY SEAL
PAMELA W COLLIER
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC634559
MY COMMISSION EXP. APR. 9,2001

Exhibit B

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. Case No. 98-322

JEREMIAH RODGERS,
Defendant.

Sentencing Hearing

Proceedings held in the above-styled cause before The Honorable Paul A. Rasmussen, Circuit Court Judge, commencing on Monday, the 7th day of June, 2004.

For the State:

JOHN A. MOLCHAN
Assistant State Attorney
5185 Elmira Street
Milton, FL 32570

For the Defendant:

LAURA SPENCER COLEMAN
Byrom & Coleman
310 Elmira Street
Milton, FL 32570

Reported by:

THERESA DANIELSON
OFFICIAL COURT REPORTER
Santa Rosa County Courthouse
6865 Caroline Street
Milton, Florida 32570
(850)623-0135

ORIGINAL

P R O C E E D I N G S

(Defendant Present)

THE COURT: This is the matter of State of Florida versus Jeremiah Rodgers, Case Number 98-322.

A background or history.

Mr. Rodgers was tried by a jury on the Information charging one count of attempted first degree murder. One count of shooting at or into a building.

The jury had found him guilty. He was sentenced.

The matter went up on Appeal, and the case was reversed and the matter was remanded to the trial court for further action, and has been placed on the trial docket for a jury trial to begin on Monday, June 28 at 8:30 for jury selection.

It's my understanding at this time Mr. Rodgers intends to enter a plea. Is that correct?

MS. COLEMAN: That is correct, Your Honor.

And I did speak with him early last week about his desire to enter a plea.

Mr. Molchan has just handed me a plea offer and I just presented it to Mr. Rodgers. But we'd talked about the terms. And the only thing remaining was

that we are waiting his initials and signature.

THE COURT: I'll tell you what. I want to be sure that he has an opportunity to read it carefully, rather than just having him sign it.

MS. COLEMAN: I did go over the Plea Agreement with him at the jail on Friday. It is just --

MR. MOLCHAN: Judge, in fact I had given Ms. Coleman a copy of one. And she went over to the jail, is my understanding, and went through. But she could not find the one that we had provided for today.

THE COURT: All right. Mr. Rodgers, have you seen the Plea Agreement before?

THE DEFENDANT: I've seen it.

THE COURT: Have you read it, sir?

THE DEFENDANT: Yes.

THE COURT: And you have read it?

THE DEFENDANT: Yes.

THE COURT: Go ahead and make sure that is the same agreement that you have seen.

MR. MOLCHAN: Basically, Judge, the terms call for the same sentence that he was initially, that was originally imposed. And that's the bottom line in this situation.

MS. COLEMAN: And I did discuss that with him

at the jail at length on Friday, Your Honor.

MR. MOLCHAN: The only issue that I ask to be addressed that is not in the Plea Agreement, Judge, is to have an inquiry to make sure Mr. Rodgers understands that basically this could be used a matter of aggravation in any future proceedings. And that would be the only thing that the State would ask for.

MS. COLEMAN: And, Your Honor, what Mr. Molchan is addressing, I did discuss that with him last week as well.

Go ahead and -- Right here.

MR. MOLCHAN: Judge, also for the Record purposes I've provided Ms. Coleman with a copy of a transcript of the prior proceedings, the trial, the opening statement, so she could be aware of the circumstances and be additionally informed of the circumstances, and that she could advise and discuss this matter with her client.

MS. COLEMAN: And I have read and reviewed that, Your Honor. And I've read and reviewed all of the facts.

May I approach?

THE COURT: Yes, ma'am. Thank you.

All right, Mr. Rodgers, sir, would you raise

your right hand and be sworn, please?

Do you swear or affirm the evidence you're about to give will be the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: Yes, I do.

WHEREUPON,

JEREMIAH RODGERS,

the witness, having been sworn testified as follows:

THE COURT: Will you state your full name for the record, please?

THE DEFENDANT: Jeremiah Martell Rodgers.

THE COURT: And, Mr. Rodgers, your attorney has just handed to me a written Plea Agreement which is dated today, June 7, and purports to have your signature. And is that your signature on the written agreement, sir?

THE DEFENDANT: Yes.

THE COURT: And I know that we spoke a little bit earlier about your reading the agreement. But have you had, have you read the agreement prior to today?

THE DEFENDANT: I read it with my attorney, yes.

THE COURT: And did you understand the agreement?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions concerning the agreement today?

THE DEFENDANT: Only one.

THE COURT: Yes, sir.

THE DEFENDANT: And that's, if you can, can you sentence me today?

THE COURT: I, the Court will sentence you today. Yes, sir.

Is that the only question that you had?

THE DEFENDANT: That's it.

THE COURT: Mr. Rodgers, have you had sufficient, I know that I brought or entered an Order requiring that you be transported back to the County Jail. And I think that you were supposed to arrive back here on May 28. And that was the scheduled date. Did you get back here on May 28 or thereabouts?

THE DEFENDANT: A few days before that.

THE COURT: A few days before that.

Have you had sufficient time to discuss this case with your attorney?

THE DEFENDANT: Yes.

THE COURT: Have you had sufficient time to discuss any theories of defense to the case with

your attorney?

THE DEFENDANT: (Nods head affirmative). Your Honor, I don't have a defense.

THE COURT: All right.

THE DEFENDANT: I just -- I've had time to do whatever it takes, and I just choose to plead guilty.

THE COURT: But I want to make sure, sir, that when you say that you choose to plea that your plea is freely and voluntarily and intelligently entered after you've had sufficient time to fully understand the consequences of doing that, and any theories of defense or any defenses that you might have to the charges. And I just want to make sure that you fully understand that. And that you've had sufficient time to discuss that with your attorney.

And do you believe that you've had sufficient time to discuss that with your attorney?

THE DEFENDANT: (Nods head affirmative). All right. I have.

THE COURT: Right now, sir, the charge in this Information in this particular Case 98-322, as it sets out on the written Plea Agreement is attempted murder. And that was with a firearm.

The maximum penalty, it is a first degree

felony punishable by life. Also carries a maximum fine of 10 thousand dollars.

Count 2 charges shooting into a dwelling, which is a second degree felony. And carries a maximum penalty of 15 years state prison, 10 thousand dollars fine or both.

Were you aware of those charges, sir?

THE DEFENDANT: Yes.

THE COURT: And are you aware of those maximum penalties?

THE DEFENDANT: Yes.

THE COURT: Now the plea agreement calls for a reimposition of the sentence that was imposed at the time Judge Bell initially sentenced you after the jury trial.

And my review of the file indicates that Judge Bell had sentenced you on Count 1 to -- First of all, adjudicated you guilty on both counts. You were sentenced to 161 months on Count 1. 161 months on Count 2. And the sentence was run concurrently.

Were you aware of that, sir?

THE DEFENDANT: (Nods head affirmative). Yes.

THE COURT: And do you know or are you aware that that's the sentence that the State is recommending that the Court impose upon sentencing

today if I decide to accept your plea?

THE DEFENDANT: (Nods head affirmative). Yes.

THE COURT: Do you also understand, sir, that you have an absolute right to a trial by jury, and that the jury trial is set for -- has been scheduled for June 28th of this month which is within the 90 days from the date of the Mandate, as required by the Florida Rules.

But if I accept your plea, you will be waiving your right to that jury trial. Do you understand that?

THE DEFENDANT: I understand.

THE COURT: Do you also understand that if I accept your plea that you'll be waiving your right to plead not guilty?

You'll relieve the State of the obligation they have to, to prove your guilt beyond and to the exclusion of all reasonable doubt?

You waive your right to cross examine the witnesses who will be testifying against you.

To present any defenses that you may have.

The right to be represented at trial by a lawyer.

The right to be present when witnesses testify against you.

You always have a right to remain silent and not testify against yourself. But if we have no trial then, of course, if you wanted to testify you would be waiving that right as well.

And you'd also be waiving the right to appeal all matters relating to the judgment of the Court, including the issue of guilt or innocence. But you always reserve the right to appeal the sentence of the Court.

And do you understand that you will be waiving all of those rights?

THE DEFENDANT: I understand that.

THE COURT: Do you also understand if you are not a citizen of the United States of America that you pleading to these charges could result in your deportation or expulsion from the County?

THE DEFENDANT: Yes.

THE COURT: Have you had any drugs or alcohol within the last 24 hours, sir?

THE DEFENDANT: No, I haven't.

THE COURT: Do you have any reason to believe that you don't fully understand or comprehend the proceedings that are going on this afternoon?

THE DEFENDANT: (Shakes head negative). No reason to believe that.

THE COURT: And are you satisfied with the services of Ms. Coleman, your attorney?

THE DEFENDANT: Yes.

THE COURT: Pardon me?

THE DEFENDANT: Yes, I am.

THE COURT: Now, another issue, sir, which is a significant issue. And as you know, based upon an earlier case I had previously imposed a sentence of death upon you in another case for the, for the murder, in a murder case.

In imposing that sentence the Court made certain findings; what we refer to as "Aggravators" and "Mitigators". And one of the Aggravating Circumstances that the Court found was based upon the commission of another capital felony or a felony involving the use or threat of violence toward another person. And this was one of two cases that the Court relied upon.

And one of the cases was a Federal case, *United States of America versus Jeremiah Rodgers* which involved the death of Jonathan Livingston.

And the second case as an Aggravating Circumstance was this particular case, the attempted murder of Mr. Layton Smitherman.

And the Court relied upon those convictions as

finding certain Aggravators when it decided to weigh those Aggravators and Mitigators and impose the death sentence.

Do you understand that by entering a plea to this charge today it may have some impact on how the Supreme Court views the sentence of death as it was imposed by this Court?

THE DEFENDANT: Sure will.

THE COURT: Do you understand that by the reversal of this case that the Supreme Court -- and, of course, we don't know what they will do, but they may have decided that the Aggravator of the case of *USA versus Jeremiah Rodgers* supports that Aggravator. But they might not have if this case had been reversed.

And I just want to make sure that you understand that by a plea to this charge today that that Aggravator -- or at least the Court finding that that is an Aggravator -- goes back to the Supreme Court as a conviction and not as a reversal.

Do you understand that, sir?

THE DEFENDANT: Yes.

THE COURT: Now, your decision, sir, to plead -- and I presume the plea is going to be what, Ms. Coleman?

MR. MOLCHAN: I think it was marked as No Contest.

THE COURT: Nolo contendere.

Let me ask you this, sir. Is the plea of nolo contendere to these two counts today, is it being freely made?

THE DEFENDANT: I did not hear you.

THE COURT: Is the plea to these two charges today, are you doing this freely and voluntarily of your own will?

THE DEFENDANT: Yes. I pled guilty. I don't know the difference between guilty and nolo contendere.

THE COURT: Well, guilty -- I'll have your attorney advise you, sir.

(DEFENSE COUNSEL CONFERS WITH CLIENT)

MS. COLEMAN: Your Honor, he indicated that he is actually admitting guilt.

THE COURT: And, sir, do you understand that by an admission of guilt that what you're saying is that the facts, as they are alleged in the Information, are true and correct? And you are guilty and you actually committed those two offenses in the way that they were described in the Information.

THE DEFENDANT: That's what I am pleading to.

THE COURT: Has anybody, sir, forced, coerced, or threatened you to any way whatsoever to plead guilty to these two counts today?

THE DEFENDANT: (Shakes head negative.) No.

THE COURT: Mr. Molchan, what facts, if this case went to trial again, what facts would the State be prepared to prove or at least present to a jury?

MR. MOLCHAN: Based upon what the State would be able to put forward is that on the 29th of March, 1998, Mr. Layton Smitherman, the victim in this particular case, was seated in his residence when he was shot one time through the window. It penetrated a chair that he was sitting in, and hit him in the shoulder.

Subsequent investigation turned up Mr. Rodgers as a suspect. He made a statement that he indicated that he, along with a co-defendant were engaged in going to find someone to shoot. And in fact Mr. Rodgers had a 380 Lorison pistol and fired the shot that went through the house into Mr. Smitherman.

Mr. Smitherman was taken to the hospital and he, of course, recovered.

Basically there was a casing found at the scene

that matched, that was found, recovered. Later investigation showed that a 380 Lorison was found in the possession of Mr. Rodgers. And that particular pistol and casing were a match from that standpoint from an FDLE lab analyst.

THE COURT: In what county was Mr. Smitherman shot?

MR. MOLCHAN: In Santa Rosa County, Judge.

THE COURT: Mr. Rodgers, do you admit those facts?

THE DEFENDANT: Yes, sir.

THE COURT: State want to be heard?

MR. MOLCHAN: No.

THE COURT: Any other matters the State wants to inquire on?

MR. MOLCHAN: No, Judge.

THE COURT: Ms. Coleman, any other matters that you want to inquire upon?

THE DEFENDANT: No.

MS. COLEMAN: Nothing.

THE COURT: Does either the State or defense know of any reason then why sentence should not be imposed, or why the Court should not accept a plea at this time?

MR. MOLCHAN: Not from the State, Your Honor.

THE COURT: Does Mr. Rodgers want to be heard?

MS. COLEMAN: Do you have --

THE DEFENDANT: Can I say something to, to Mr. Smitherman?

THE COURT: Mr. Molchan?

MR. MOLCHAN: Mr. Smitherman would like to hear from Mr. Rodgers.

THE COURT: All right.

THE DEFENDANT: -- I put you through a lot. And I was pretty young when I did it. And I -- put all of you through a lot. And I can't take it back. I can't take it back.

All I can do is let you know I regret it, not for what I am going through, but for what I put you through.

From the heart. I'm sorry. And I hope that you can accept it.

MR. SMITHERMAN: I can accept that part about me. But, you know, there are two other people that is dead after you shot me. And you did not stop after you shot me, and you just continued on with it. And you left two kids that is dead. And you can not bring them back.

I'm fine. I can accept this. But I can't accept the two that you disposed of. And there's

two families there whose life is changed forever. Mine is still fine. But their lives can't ever be brought back to what it was. And that's the difficult part for me.

And so it's just -- The part that you are apologizing to me for, I can accept that part. And -- but the part, the other part is, is irreversible, see. And I know that you cannot undo. And you may wish that you can undo everything, but, you know, life is not like a videotape where you can back it up and rerun it. What happens, happens. And you have to live with it.

And you didn't stop your spree with me.

You had -- if you had it would be a lot different today. But, but the other families that is involved in this is, you know, no way that it can be undone. And so -- you know, that is, that family should be carried or for them for their part.

But for myself, I have no remorse, for myself, because I am fine. And it is just, just a miracle that I am, but it's, its -- but I am fine.

And -- but other ones involved is not. Their life will never be the same.

That's about all I would have to say there.

THE COURT: All right. Thank you,

Mr. Smitherman.

THE DEFENDANT: Can I say one more thing, Judge?

THE COURT: Yes.

THE DEFENDANT: I don't know if it came out in the trial the first time, but -- I don't mean this to sound the wrong way, but -- You made me believe in God because I pulled the trigger more than once. And gone this far. So that's pretty amazing.

THE COURT: All right. Thank you, sir.

THE DEFENDANT: Thank you, Judge.

THE COURT: You're welcome.

Ms. Coleman, is he entering a plea at this time?

MS. COLEMAN: He will enter a plea of guilty, Your Honor.

THE COURT: Both counts.

MS. COLEMAN: Both counts.

THE COURT: One and 2.

MS. COLEMAN: One and 2.

THE COURT: Mr. Rodgers, if you will please rise, sir.

Mr. Rodgers, and that's what you want to do today, sir, is enter a plea of guilty to both Counts 1 and 2 of this case?

THE DEFENDANT: Yes.

THE COURT: Mr. Rodgers, based upon your plea of guilty to Count 1, Case Number 98-322, the attempted murder with a firearm of Mr. Smitherman, Count 2, the shooting into a dwelling, the Court is going to find that the plea of guilty on both counts is freely, voluntarily, and intelligently entered after you've had the benefit and advice of counsel.

The Court is going to adjudicate you guilty on both Counts 1 and 2.

It is going to be the judgement and sentence of the Court then -- Do you want to say anything, sir, before the Court imposes sentence?

THE DEFENDANT: (Shakes head negative). Just, no.

THE COURT: It's going to be the judgment and sentence of the Court then on Count 1 you will be remanded to the custody of the State of Florida, Department of Corrections, for a period of 161 months.

On Count 2, you'll be remanded to the custody of the Department of Corrections, State of Florida for also a period of 161 months.

Counts 1 and 2 will run concurrent with each other, and consecutive to any other sentence that

was imposed upon you.

The Court will also impose the fines and costs in the amount of 635 dollars.

The Court will reserve jurisdiction with regard to restitution to Mr. Smitherman. But I will require you to make restitution, but reserve jurisdiction as to the amount, manner, and method of payment of that restitution.

Any other matters? The use of a firearm also has the mandatory minimum sentence, I believe, back in 1998, I believe was it three --

MR. MOLCHAN: Three years, Judge.

THE COURT: And the Court also imposes the mandatory minimum sentence of that of three years based upon the use of the firearm.

Sir, you have a right to appeal the legality of the sentence of the Court. If you can not afford an attorney one will be appointed for you.

You have 30 days from today to file a Notice of Appeal. And you will need to be fingerprinted on these charges.

The Court will remain while you're being fingerprinted.

Thank you, sir.

(OFF THE RECORD)

THE COURT: All right, Mr. Cotton that concludes the proceedings, I think, with Mr. Rodgers on this case, and he can be transported back to state prison.

CORRECTIONAL OFFICER: Yes, sir.

THE COURT: We're adjourned then. Good luck to you, Mr. Rodgers.

(PROCEEDINGS CONCLUDED)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF SANTA ROSA

I, THERESA DANIELSON, Official Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings, and that the transcript is a true record to the best of my ability, knowledge, and belief.

DATED this 7th day of July, 2004.

Theresa Danielson
Court Reporter

Exhibit C

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,
vs. Jeremiah Martel Rodgers
Defendant.

Case Number (s): 98-322 -CFA
Division A

SENTENCE RECOMMENDATION

1. THE FOLLOWING REFLECTS ALL TERMS OF THE SENTENCE RECOMMENDATION:

CASE #	COUNT	DEFENDANT CURRENTLY CHARGED WITH	MAXIMUM	FINE	MANDATORY
98-322	1	Att murder w/ Fla	Life PBL	10,000	
	2	Shooting into Building	15yr	10,000	
		As Charged			

DEFENDANT PLEADS: ____GUILTY X NOLO CONTENDERE to the following:

TERMS OF PLEA ENTRY AND SENTENCING RECOMMENDATION AGREED UPON BY THE STATE AND DEFENDANT:
State recommend [illegible] Sentence Law previous Sentence

FILED
SANTA ROSA COUNTY
CLERK'S OFFICE
2001 JUN -7 P 1:36

2. ADJUDICATION OF GUILT IS: ____**WITHHELD** X **ADJUDICATED** ____**DISCRETION OF COURT**
3. THE PRESENTENCE REPORT IS ____**ordered** ____**waived** ____**not required**

4. CERTIFICATION OF DEFENDANT:

In addition to certifying to all terms, conditions, obligations, duties and rights heretofore stated in this plea agreement, I hereby certify that I have read the information or indictment and I understand the charge(s) set forth in the information or indictment or I understand any lessor included offense(s) to which I enter my plea(s). I understand all terms, conditions, obligations, duties, and rights that are listed below and that the sentencing court is incorporating by reference this complete plea agreement as part of the sentencing order imposed by the court. Each term, condition, obligation, duty and right has been explained to me by my attorney, if so represented by an attorney. I am able to read, or if I cannot read, everything in this plea agreement has been read to me and I understand all of this plea agreement. If represented by an attorney, I am satisfied with the attorney's advice and services and my attorney has not compelled or induced me to enter into this plea agreement by any force, duress, threats or pressure. Also, my attorney, the Court and the prosecutor have not made any promises nor have I relied on any representations as to actual time I would serve in entering this plea agreement if I were to be incarcerated under the terms of the agreement. I further understand that, unless otherwise designated in this plea agreement, I must complete all terms and conditions no later than sixty (60) days prior to the termination of any supervision imposed.

1. I hereby plead (guilty) (nolo contendere) to the charge in this case(s) as reflected by this plea agreement.
2. **I understand that I am giving up the following rights:**
   - **(a)** The right to plead not guilty;
   - **(b)** The right to trial by jury;
   - **(c)** The right to be represented or helped at trial by a lawyer;
   - **(d)** The right to compel or make any witnesses come to trial;
   - **(e)** The right to be present when witnesses testify against me;
   - **(f)** The right to cross-examine witnesses who testify against me;
   - **(g)** The right to remain silent and not testify against myself;
   - **(h)** The right to present any and all defenses I may have;
   - **(i)** The right to appeal all matters relating to the judgment, including the issue of guilt or innocence.
3. I understand that there will **not** be a further trial of any kind and I waive or give up my right to a trial.
4. I also understand that the Judge may ask me questions about the crime and that the answers I give will be under oath, subject to perjury.
5. I understand that if I am **not** a citizen of the United States of America, that my plea to these charges may result in my deportation or expulsion from the United States.
6. I hereby waive or give up any right to request a modification of my sentence within the limits of this agreement absent a substantial change in circumstances occurring after sentencing.
7. I understand that the maximum period of imprisonment and fines, as well as any mandatory minimums that apply, with regard to the charges to which I am entering my plea are as indicated on page 1 of this agreement and paragraph 16 below and any applicable attachments. I have reviewed the sentencing guidelines applicable to the cases to which I am entering a plea.
8. I have reviewed the facts of my case(s) with my attorney and I agree and stipulate there are sufficient facts available to the State to justify my plea of guilty or nolo contendere to the charge(s).
9. I have not had any drugs, alcohol, or medication of any kind in the past 24 hours except:_____.
10. I have never been declared legally incompetent or insane. I hereby enter this plea agreement fully and voluntarily and of my own accord and with full understanding of all matters set forth in the information and in this plea agreement.

☐ 11. If I am a **juvenile**, I have read, signed and agreed to all the terms listed in the Addendum to Plea Agreement for Juvenile Offenders.
☐ 12. I understand that if I am convicted of a crime of **domestic violence** as defined by Section 741.28, Fla. Stat., that the Court must impose a minimum of 1 year of probation during which I must complete a "batterer's" intervention program.

☐ 13. I understand that if I am convicted of possession of, sale of, trafficking in, or conspiracy to possess, sell or traffic in a **controlled substance**, the court will direct the Department of Highway Safety and Motor Vehicles to withhold issuance to me of a driver's license or revoke my driver's license as required pursuant to and/or until such conditions as are set forth in F.S. Sections 322.055 or 322.056 are met. Any revocation will be in addition to any already imposed.

☐ 14. I understand if I plea guilty or nolo contendere to any crime that is included in the **SEXUAL PREDATOR** criteria and in Section 775.21, Florida Statutes, and if I qualify as a **SEXUAL PREDATOR** as defined in Section 775.21, Florida Statutes, the Court will enter a written order finding me to be a **SEXUAL PREDATOR**. If I am found to be a **SEXUAL PREDATOR** by the Court, I understand I will have to maintain registration as a **SEXUAL PREDATOR** with the Department of Corrections and appropriate law enforcement agencies will inform the community and public of my presence.

☐ 15. I understand that if I plea nolo contendere or guilty to a "sexually violent offense" as defined by Section 394.912, Florida Statutes and sentenced to prison, prior to my release from prison, I may be declared to be a **"SEXUALLY VIOLENT PREDATOR"** and be subject to a civil commitment for long term care and treatment in a state institution, pursuant to Chapter 394, Florida Statutes (**Jimmy Ryce Act**).

☐ 16. I understand if I plea guilty or nolo contendere to any crime that would qualify me as a **"SEXUAL OFFENDER"** as described in Section 943.0435, Florida Statutes, I will be required to follow certain registration requirements concerning my residence.

☐ 17. I understand that if I plea nolo contendere or guilty to any offense or attempted offense, defined in Chapter 794(Sexual Battery), Chapter 800(Lewd/Lascivious/Indecent Assault or Act in Presence of Child), Sections 782.04(Murder), 784.045(AggravatedBattery),810.02(Burglary), 812.133(Car jacking) or 812.135(Home Invasion Robbery), Florida Statutes, I will be required to submit two (2) **blood specimens** to the Florida Department of Law Enforcement (FDLE) designated felony facility and that unless I lack the ability to pay as determined by the Court, that I must reimburse the appropriate agency for the costs incurred in the drawing and transmitting of the blood specimens to the FDLE.

☐ 18(a) I understand that the State is seeking an enhanced sentence against me as a habitual felony offender (HFO), habitual violent felony offender (HVFO), violent career criminal (VCC), prison release re-offender (PRR), ten-20-life (10-20-L), or three strikes (3 strikes) sanctions, pursuant to Chapter 775, Florida Statutes. I understand such a sentence could deny any form of early release from prison and could require a mandatory minimum sentence, or a requirement to serve 100% of the sentence imposed by the Court.

☐ (b) If the Judge should sentence me as such, I could receive the following sentence and/or mandatory minimum sentence:

HFO	_____ years imprisonment	
HVFO	_____ years imprisonment with	_____ years mandatory minimum imprisonment
VCC	_____ years imprisonment with	_____ years mandatory minimum imprisonment
PRR	_____ years imprisonment with	_____ years mandatory minimum imprisonment
10-20-Life	_____ years imprisonment with	_____ years mandatory minimum imprisonment
3 Strikes	_____ years imprisonment with	_____ years mandatory minimum imprisonment

5. COSTS, FINES, RESTITUTION

[128.00 M/D]

278.00 Fel **Standard Court Costs** includes:County Reimbursement/Clerk Services (F.S. 938.05) - (Felony $200/Misdemeanor $50); Crimes Comp.Trust Fund (F.S. 938.03) - $50; Criminal Justice Standards and Training Trust Fund; Operating Trust Fund (F.S. 938.01)- $3; Crime Stoppers Program (F.S. 938.06) - $20; Teen Court Assessment (F.S. 938.19 and Santa Rosa Ord 2000-02) - $3; Criminal Justice Education and Training (F.S. 938-15) - $2;

210.00 **Fine** of $200, F.S. 775.083, plus $10 as 5% surcharge, F.S. 938.04

Additional Mandatory Costs where:

_____ victim is elderly/handicapped as def. by F.S. 426.002, $20.00 (F.S. 938.09)
_____ victim is elderly/handicapped as def. by F.S. 426.002, 10% surcharge of fine (F.S. 938.11)
_____ misdemeanor pled to involving drugs or alcohol, $15.00 (F.S. 938.13)
_____ D.U.I. pled to, $135.00 additional costs (F.S. 938.07).....and/or .....B.U.I. pled to, $60.00 additional costs (F.S. 327.35)
_____ Reckless driving pled to, $5.00 additional to any fine for EMS Trust Fund (F.S. 316.192 (3))
_____ Leaving scene of accident pled to, $5.00 additional to any fine for EMS Trust Fund (F.S. 316.061 (1))
_____ Domestic Violence, $201.00 additional to any fine (F.S. 938.08)

Discretionary Costs where:

_____ violation of F.S. 893, assessment of $100 for FDLE operating trust fund if Court finds def. has ability to pay fine and assessment and would not be prevented thereby from being rehabilitated or making restitution (F.S.938.25)
_____ violation of F.S. ch. 893, s. 316.193, s. 856.011, s. 856.015, ch. 562, ch. 567 or ch. 568, assessment for drug and alcohol programs up to an amount equal to the maximum fine authorized for the offense if Court finds def. has ability to pay fine and additional assessment and will not be prevented thereby from being rehabilitated or from making restitution. (F.S. 938.21)
_____ violation of F.S. ch. 893, s. 316.193, s. 856.011, s. 856.015, ch. 562, ch. 567, ch. 568, assessment up to amount of maximum fine authorized for offense for assistance grants for drug and alcohol treatment programs. (F.S. 938.23)
_____ **Costs of prosecution,** including investigative costs by law enforcement agencies, and by fire departments for arson investigations, if documented. (F.S. 938.27). To: _____
_____ State provided legal assistance, costs and fees less amount assessed pursuant to F.S. 938.05. (938.29)

150.00 Court costs for Court Facilities Fund, F.S. 939.18
_____ Public Defender/Court Appointed Attorney Discretionary Assessment, F.S. 939.29

_____ **TOTAL FOR FINES AND COSTS** at _____ Per month.

_____ Probation or Community Control, **Costs of Supervision** (Indigent - $52.00; Non-indigent - $103.72; Waived - n/a)

Pages 1 & 2 read and initialed by defendant: _____

RESTITUTION:

- ☐ Upon a plea of nolo contendere or guilty for a violation of Chapter 794 or guilty for a violation of Chapter 794 or Chapter 800, a defendant must make restitution to the Crimes Compensation Trust or to the county, whichever paid for the initial forensic physical examination, in an amount equal to compensation paid to the medical provider for the cost of the initial forensic physical examination that restitution amount due is _____.
- ☐ The defendant understands that an order of restitution entered as a part of this plea agreement is as definitive and binding as any other order of restitution in and that it may be enforced as provided in Section 775.089, Florida Statutes.
- ☐ The defendant shall make restitution in:

Case# 98-327 reserve jurisdiction 45 to amount in the amount of _____ at _____ per month.

Case# _____ to _____ in the amount of _____ at _____ per month.

6. Term and Conditions of Probation or Community Control

(a) Standard Conditions

If probation and/or community control is part of the agreed upon sentence, the Defendant must comply with all the standard conditions of probation or community control, as required by **Section 948.03, Florida Statutes**, unless otherwise announced by the Court.

(b) Standard Conditions for Listed Sex Crimes

If the defendant is placed on probation and/or community control for a violation of Chapter 794, Sections 800.04, Sections 827.071 or Sections 847.014, Florida Statutes, the Court **must** impose and the defendant must **comply** with additional standard conditions of supervision in addition to all other standard and special conditions imposed. These additional standard conditions are set forth in Section 948.03(5), Florida Statutes. These include, but are not limited to, such things as a special curfew; restrictions on where the defendant may live; restrictions on unsupervised contact with a child under the age of 18; restrictions on where the defendant may work or visit; a requirement to participate and complete a sex offender treatment program, a prohibition from contact with the victim(s); a prohibition of the defendant from possessing obscene or pornographic material; a requirement to make restitution to the victim(s) for all necessary professional mental and/or physical health care needs; a requirement of a submission of two blood specimens to the Florida Department of Law Enforcement to be registered with the DNA data bank; a requirement to a submission to an annual polygraph examination; a requirement to maintain a driving log; a prohibition of maintaining a post office box; a requirement, at the defendant's expense, to obtain an HIV Test with the results to be released to the victim; and a requirement, at the defendant's expense, of electronic monitoring. These and other standard conditions are described in more detail in Chapter 948.03, Florida Statutes.

(c) Special Conditions

In addition to <u>all</u> standard conditions of probation, required by **Section 948.03, Florida Statutes**, the following special conditions (as indicated) are being imposed upon the defendant:

_____ The defendant shall have no contact with codefendants, directly or indirectly.

_____ The defendant shall not have contact with the victim(s) directly or indirectly, unless the victim(s) files with the supervising officer a written declaration agreeing to contact for a set period or until revoked in writing.

_____ The defendant will complete _____ hours of community service no later than 60 days before termination of defendant's supervision.

_____ The defendant will attend and successfully complete the following counseling as indicated:

☐	Anger control counseling	☐	Sexual Offender counseling
☐	Domestic violence counseling	☐	Outpatient substance abuse counseling
☐	Mental Health/Psychological counseling	☐	Residential substance abuse counseling

_____ The defendant agrees to testify truthfully regarding the involvement of any codefendants.

In addition to the above standard and special conditions of supervision, the defendant agrees to the following special conditions or modifications of standard conditions of supervision:

_____

_____

_____

_____

Page 3 read and initialed by defendant: _____

7. **FACTUAL BASIS FOR PLEA (check paragraph (a) or write in factual basis in paragraph (b):**

☑ (a) The arrest report which is a part of the court record filed with the clerk of the court is hereby incorporated by reference and agreed to by the defendant as a factual basis for the plea OR

☐ (b)

ACKNOWLEDGMENT OF DEFENDANT

By signing this **Sentence Recommendation**, I, the undersigned defendant in this case, agree that I have read and understand the contents of this document, **and** if represented by an attorney, that I have discussed with my attorney all of the ramifications or consequences of entering a plea of guilty or nolo contendere to these charges. If placed on probation, I understand all the standard and special conditions of probation that will be required of me, as is set forth in **Section 948.03, Florida Statutes** and in this agreement. If represented by an attorney, I am satisfied with the attorney's advice and services and my attorney has not compelled or induced me to enter into this plea agreement by any force, duress, threats, pressure or promises.

Jeremiah Rolyon — June-7-2004

DEFENDANT Social Security No. 263-83-1588 — DATE

JOHN A. MOLCHAN, ASSISTANT STATE ATTORNEY — 6/7/04
FLORIDA BAR NUMBER: 747580 — DATE

CERTIFICATE OF DEFENDANT'S ATTORNEY

I, Defendant's Counsel of Record, certify that: I have discussed this case with Defendant, including the nature of the charge(s), essential elements of each, the evidence against him/her of which I am aware, the possible defenses he/she has, the maximum penalty for the charge(s) and the facts set forth in the State's information or on the record. I have not made any promises or representations to Defendant as to actual time he or she would serve if incarcerated and have explained that matters related to parole, release, gain time, etc. are controlled by the Department of Corrections and the Legislature and are subject to change. I believe he/she fully understands this plea agreement, the consequences of entering it, and that Defendant does so of his/her own free will. In my opinion the defendant is mentally competent. I also understand that as part of this plea agreement, I am required to comply with the provisions of Section 27.56, Florida Statutes, concerning assessment of costs and attorney's fees and that any such costs or fees will be reduced by an amount assessed against the Defendant pursuant to Section 37.3455, Florida Statutes.

ATTORNEY FOR DEFENDANT — 6/7/04
FLORIDA BAR NUMBER: 0468691 — DATE

Page 4 read and initialed by defendant: JR

ADDENDUM TO SENTENCE RECOMMENDATION
(JUVENILE OFFENDERS)

Before adult sanctions an be imposed in your case you have the right to have the court order and consider a presentence investigation report prepared by the Department of Corrections, with comments by the Department of Juvenile Justice, regarding the suitability of adult, juvenile, or youthful offender dispositions in this case. Furthermore, the law requires that the judge make findings of fact in writing regarding the following matters:

1. The seriousness of the offense to the community and whether the protection of the community requires adult disposition.
2. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the offense was against persons or against property; greater weight being given to offenses against persons, especially if personal injury resulted.
4. The sophistication and maturity of the defendant, as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.
5. Defendant's record and previous history including:
   a. Previous contacts with HRS, the Department of Corrections, law enforcement agencies, and courts;
   b. Prior periods of probation or community control;
   c. Prior adjudications of delinquency or violation of law; and
   d. Prior commitments to institutions.
6. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if he is assigned to juvenile services and facilities.
7. Whether the Department of Juvenile Justice has appropriate programs, facilities, and services immediately available.
8. Whether youthful offender or adult sanctions would provide more appropriate punishment and deterrence of further violations of law than the imposition of juvenile sanctions.

By signing this addendum, you acknowledge that you waive your right to have the court order and consider a presentence investigation and that you fully and clearly understand each factual finding which the Court is required to make, that each has been reviewed with you by your attorney, that you acknowledge and agree that adult sanctions are appropriate and that you are waiving your right to require that the Court make those findings in writing.

DATED this _____ day of _____, _____.

_____
DEFENDANT

Exhibit D

CORRECTED 8-25-06

[X] IN THE CIRCUIT COURT OF THE 1st JUDICIAL CIRCUIT SANTA ROSA COUNTY, FL

DIVISION		CASE NUMBER
[_] CIVIL [X] CRIMINAL [_] JUVENILE [_] TRAFFIC	[X] JUDGMENT [_] JUDGMENT/ORDER OF PROBATION [_] JUDGMENT/ORDER OF COMMUNITY CONTROL	98000322CFMA

File # 200655297
OR BK 2656 Pages 1586 - 1592
RECORDED 10/03/06 16.21.25
Mary M. Johnson, Clerk
Santa Rosa County Florida

DEPUTY CLERK AR
#4
Trans # 329431

PLAINTIFF	DEFENDANT	FILED IN OPEN COURT
STATE OF FLORIDA vs	JEREMIAH MARTEL RODGERS OBTS NO. 5701000363	This 7 day of June, 2004 MARY M JOHNSON Clerk Of Court BY JANIE WARD DC

[_] PROBATION VIOLATOR [_] RESENTENCE
[_] COMMUNITY CONTROL VIOLATOR [_] AMENDED AS TO _____
[_] RETRIAL

Court was opened with the Honorable PAUL RASMUSSEN presiding, and in attendance:
State Attorney: JOHN MOLCHAN Trial Clerk: RAMONA OLSEN
Court Reporter: TERRI DANIELSON

The defendant, JEREMIAH MARTEL RODGERS, being personally before the court represented by LAURA SPENCER COLEMAN, his attorney of record and having
[ ] Been tried and found guilty
[ ] by jury [ ] by court of the following crime(s)
[X] Entered a plea of guilty to the following crime(s)
[ ] Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME
1	ATTEMPTED 1ST DEGREE PREMEDITATED MURDER WITH A FIREARM	782.04 777.04	FIRST DEGREE
2	SHOOT AT OR INTO BLDG, DWELLING	790.19	SECOND DEGREE

[_] THE [_] PROBATION [__] COMMUNITY CONTROL PREVIOUSLY ORDERED IN THIS CASE IS REVOKED.
[_] THE PRIOR ADJUDICATION OF GUILT IN THIS CASE IS CONFIRMED, and no cause having been shown why the defendant should not be adjudicated guilty.
[_] IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.
[X] IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s)
[_] and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794 F.S.) or lewd and lascivious conduct (ch. 800 F.S.) the defendant shall be required to submit blood specimens.

DONE AND ORDERED SANTA ROSA COUNTY, FL	PAUL RASMUSSEN JUDGE	DATE 6-7-04

SCANNED

State of Florida
v.

JEREMIAH MARTEL RODGERS
Defendant

Case Number 98-322-CF

FILED
SANTA ROSA COUNTY
CLERK'S OFFICE
2004 JUN -7 P 1:37

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	**7. Left Index**	**8. Left Middle**	**9. Left Ring**	**10. Left Little**
				

Fingerprints taken by: L D Q #123
Name

Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, JEREMIAH MARTEL RODGERS, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in the open court in Santa Rosa County, Florida, this 7 day of JUNE, 2004.

Paul A. Ramsay
Judge

FORM# 1207 MIRACLE STRIP PRINTING 932-7598

Rodgers

DEFENDANT		CASE NUMBER
JEREMIAH MARTEL RODGERS	SENTENCE	98000322CFMA

(AS TO COUNTS) 1,2

The defendant, being personally before this court, accompanied by the defendant's attorney of record, LAURA SPENCER COLEMAN and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check applicable provision)

[_] and the court having on _____ deferred impositon of sentence until this date (date)

[_] and the court having previously entered a judgment in this case on __ ____ now resentences the defendant

[_] and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

IT IS THE SENTENCE OF THE COURT that:

[X] The defendant pay a fine pursuant to section 775.083, Florida Statutes, plus a 5% surcharge pursuant to section 950.25 Florida Statutes, as indicated on the Fine/Costs/Fee Page.
[X] The defendant is hereby committed to the custody of the Department of Corrections.
[_] The defendant is hereby committed to the custody of the Sheriff of SANTA ROSA COUNTY, FLORIDA.
[_] The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (check one; unmarked sections are inapplicable):

[_] For a term of natural life.
[X] For a term of 13 YRS 5 MOS
[_] Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

IF "SPLIT" SENTENCE, complete the appropriate paragraph:

[_] Followed by a period of _____ on [_] probation [_] community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in the order entered herein.
[_] However, after serving a period of _____ imprisonment in the Department of Corrections, the balance of the sentence shall be suspended and the defendant shall be placed on [_] probation [_] community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of [_] probation [_] communtiy control set forth in the order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarcerations portions shall be satisfied before the defendant begins service to the supervision terms.

DEFENDANT JEREMIAH MARTEL RODGERS OBTS NO. 5701000363	OTHER PROVISIONS	CASE NUMBER 98000322CFMA

(AS TO COUNTS) 1,2

[_] RETENTION OF JURISDICTION	The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983)
[ ] ORIGINAL JAIL CREDIT	It is further ordered that the defendant shall be allowed a total of ___ yrs credit for such time incarcerated before imposition of this sentence.
[X] Consecutive/ Concurrent AS TO OTHER COUNTS	It is further ordered that the sentence imposed for this count shall run [ ] consecutive to [X] concurrent with (check one) the sentence set forth in count ONE of this case above.
[ ] Consecutive/ Concurrent AS TO OTHER CASES	It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run [ ] consecutive [ ] concurrent with [_] any active sentence being served [_] specific sentences: _____
CREDIT FOR TIME SERVED (To be used for Resentencing and after VOP and VOCC.)	[X] The Department of Corrections shall apply the original jail time credit and to compute and apply credit for time served and the gain time awarded pursuant to section 944.275 Florida Statutes. (Pre October 1, 1989)
	[_] The Department of Corrections shall apply the original jail time credit and to compute and apply credit for time served and unfortified gain time awarded during prior service of incarceration of the split sentence pursuant to section 948.06(6) Florida Statutes. (Post October 1, 1989)
	[ ] Defendant is allowed credit for _____ days credit county jail served between date of arrest as a violator and date of resentencing. The Department of Corrections shall apply original jail credit awarded and shall compute and apply credit for actual time served in prison and any earned and unfortified gain-time awarded during prior service on: CASE NO. _____ COUNT _____ _____ _____ pursuant to section 944.276 Florida Statutes.

SPECIAL PROVISIONS
(As to Count 1)

By appropriate notation, the following provisions apply to the sentence imposed.

Mandatory/Minimum Provisions:

FIREARM

X It is further ordered that the 3 year(s) minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

DRUG TRAFFICKING

____ It is further ordered that the _____ year(s) mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

CONTROLLED SUBSTANCE
WITHIN 1,000 FEET OF A SCHOOL

____ It is further ordered that the _____ year(s) minimum imprisonment provision of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

HABITUAL FELONY OFFENDER

____ The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

HABITUAL VIOLENT FELONY OFFENDER

____ The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

LAW ENFORCEMENT PROTECTION ACT

__ It is further ordered that the defendant shall serve a minimum of _____ year(s) before release in accordance with section 775.0823, Florida Statutes.

OFFENSE

Defendant JEREMIAH MARTEL RODGERS Case Number 98-322-CF

Other Provision, continued:

Consecutive/Concurrent As To Other Counts

___ It is further order that the sentence imposed for this count shall run (check one)___consecutive to___concurrent with the sentence set forth in count _____of this case.

Consecutive/Concurrent As To Other Convictions

XC It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) X consecutive to___ concurrent with the following:
(check one)

X any active sentence being served.

___ specific sentences:_____

FILED
SANTA ROSA COUNTY
CLERK'S OFFICE
2004 JUN -7 P 1:36

In the event the above sentence is to the Department of Corrections, the Sheriff of Santa Rosa County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further orders _____

DONE AND ORDERED in the open court in Santa Rosa County, Florida,

this 7 day of JUNE, 20 04.

Paul A. Rowe

Judge

Exhibit E

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR WALTON COUNTY, FLORIDA

STATE OF FLORIDA,

v. CASE NO. 98-322-CF

JEREMIAH MARTEL RODGERS

_____/

MOTION TO SET ASIDE GUILTY PLEA

Comes the Petitioner by and through undersigned counsel and, pursuant to Fla.R.Crim.P. 3.170(l), respectfully requests that the Court enter an Order setting aside his guilty plea in this case, and for cause shows as follows:[1]

[1]Undersigned counsel is filing this on Defendant's behalf for the following reasons. Undersigned counsel represents Defendant in the capital appeal before the Florida Supreme Court. This case may directly affect the capital case. Furthermore, undersigned counsel is appointed in this Court to represent the Defendant in this case, and the appointment order does not expressly confine said representation to representation on appeal.

The Rules of Professional Responsibility direct what counsel should do if a client suffers from a disability. Rule 4-1.14 provides that an attorney should "as far as *reasonably possible*, maintain a normal client-lawyer relationship with the client," but the Comment to the rule recognizes this "may not be possible in all respects." A lawyer may "take other protective action with respect to a client only when the lawyer reasonably believes the client cannot adequately act in the client's own interest." 4-1.14 (b). Undersigned counsel is undertaking these protective actions because, given Mr. Rodgers' history and present circumstances, he is not presently capable of determining what is in his best interest.

I. PROCEDURAL HISTORY

1. Defendant was indicted in 1998 for the attempted murder of Leighton Smitherman (at issue in this case) and for the murder of Jennifer Robinson (Case Number 98-274-CFA. David G. White, Esq, was appointed to represent him in both cases. Denny LeBoeuf, Esq., served as co-counsel in the murder case.

2. Defendant was tried by jury and was convicted in this case. The state then sought the death penalty in case 98-274, and introduced this conviction as an aggravating circumstance. A death sentence was imposed.

3. Defendant appealed both cases. David White initially represented him on this appeal. However, Mr. White was replaced by the Office of the Public Defender and, thereafter, this Court appointed undersigned counsel to represent the Defendant. Undersigned counsel was also appointed to represent the Defendant before the Florida Supreme Court in the capital appeal.

4. The attempted murder conviction was set aside by the First District Court of Appeals. The capital appeal is still pending. After the reversal of this case, the Assistant Attorney General handling the appeals, Mr. French, advised the Florida Supreme Court that the State intended swiftly to retry Defendant.

5. On or about May 10, 2004, this Court Appointed David White to represent Defendant at the retrial. Mr. White moved to withdraw, and on or about

May 20, 2004, this Court appointed Laura Coleman to represent the Defendant. By separate order of May 20th, the Court scheduled pre-trial motions for hearing on June 16, 2004, and trial to commence June 28, 2004.

6. On or about May 28, 2004, the Defendant was taken from Union Correctional Institution to the Santa Rosa County jail. On June 3, 2004, Defendant wrote a letter to the Court indicating that he was guilty and wished to plead guilty. On June 4, 2004, Defendant met with Ms. Coleman.

7. On June 7, 2004, the Defendant entered a nolo contendere plea, was sentenced, and was returned to Union Correctional Institution.

II. Reasons to Allow Plea Withdrawal

A. The Defendant is not competent

1. Undersigned counsel is aware of Defendant's lengthy history of mental illness, suicide attempts, self-mutilation, and self-destructive behavior. This Court is also familiar with Mr. Rodgers extensive history of state diagnosed mental illness. For example, this Court conducted a hearing in the capital case on March 10, 2000. Counsel advised the Court that since the time of a first competency hearing, Mr. Rodgers had resumed self-mutilating behavior to the point of near suicide, that the jail had prescribed anti-psychotic medicine, and that Mr. Rodgers

had been placed in restraints for days and weeks at a time. They advised the court that many photographs depicting a cell full of blood, feces on the wall of the cell, and a bloody Mr. Rodgers had been taken on numerous occasions. Counsel also advised the Court that Mr. Rodgers had become non-communicative. Vol. 18, pp. 1471 - 1512.

2. Judge Rasmussen commented that the facts presented "a complex – it's a very complex situation," *id.* at 1512, and ordered a re-evaluation of the Defendant's competency. *Id.* at 1529. Mr. Rodgers was re-evaluated, reports were submitted to the court, and the second competency hearing occurred on April 3, 2000. At that competency hearing, Dr. McLeod described some of Mr. Rodgers's problems. Dr. McLeod is a physician with a family practice. He has a contract with Santa Rosa County jail, and provides almost of the medical services for the pre-trial detainees. During his pre-trial detention, Mr. Rodgers was kept in the hospital unit, and Dr. McLeod saw him every day. Vol. 21, p. 2007; 2018. Dr. McLeod concluded: that Mr. Rodgers was severely mentally ill; that the conditions under which he was confined made him more ill; and that Mr. Rodgers should have been housed in a psychiatric treatment center, but no facility would accept him.

3. Dr. McLeod is not a psychiatrist so he consulted with one, Dr. Montes,

who came to the conclusion that Mr. Rodgers's behaviors were "representing depression and **serious psychiatric illness.**" Vol. 21, p. 1979 (testimony of Dr. Benson). Dr. Montes "describes hopelessness, helplessness," Vol 21, p. 1901, and prescribed **psychotropic medication**, Remeran and Zyprexa. Remeran is "an antidepressant drug" and Zyprexa is "for antipsychotic treatment." Vol. 21, pp. 1891-92.[2]

4. Because of his mental condition, Mr. Rodgers was kept completely isolated, and was frequently restrained, hand-cuffed, put in straight jackets, and kept in a rubber room–for his own safety. His self-mutilation and great loss of blood had made him anemic and he had been prescribed mega-vitamins. Vol. 21, p. 2019.

5. "During the times of his psychotic behavior and self mutilation the adequacy of the medical department to take care of him was questioned by me on more than one occasion, " Dr. McLeod testified. "According to the head nurse, Debbie Sasse, because of his criminal charges none of the facilities that we use for Baker Acts and patients would accept him." *Id.* at p. 2023-24.

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[2]This medication "results in an increase in certain neurotransmitters that are normally in the brain and cause a connection, if you may, between two nerve cells of the brain." Vol. 21, p. 2013. Severe trauma damages such neurotransmitters. Vol. 12, p. 2055. *See* note 29, and text accompanying, *supra*.

6. Thus, Mr. Rodgers was kept at the jail, isolated, medicated, restrained, and suffering. Dr. McLeod sutured Mr. Rodgers many times, re-sutured when Mr. Rodgers pulled out fresh sutures, and sent Mr. Rodgers to the hospital emergency room for life-threatening self-injury. *Id.* at 2008. Dr. McLeod would order restraints, solely for medical reasons. *Id.* at 2015. And **"[h]e suffered, yes he did--what you would expect from someone who was restrained for a long period of time ...up to 13 or 14 days."** *Id.* at 2016. After such a fortnight, Dr. McLeod had to remove the restraints because the psychiatric benefit was outweighed by the medical unsoundness of tying a human down for weeks. *Id.* at 2017. This sort of incarceration had, according to Dr. McLeod, "resulted in my opinion in him having some psychotic episodes due to the sensory deprivation." Vol. 22, p. 2023.[3]

7. Drs. McClaren, Benson, and Gilgun submitted reports to the court, all of which were very similar. They reported and testified that Mr. Rodgers had had two

[3]As the prosecutor accurately recognized while cross-examining this local jail doctor, "[i]t is my understanding that he has had more than one episode that could be considered psychotic." Vol. 22, at 2037. Dr. McLeod witnessed one episode in which Mr. Rodgers barked like a dog for hours and hours, Vol. 21, pp. 2020, 2040, and also witnessed Mr. Rodgers's delusional belief that McLeod and the nurses were conspiring to turn him into a zombie with the psychotropic medications Melaril and Elavil. Vol. 21, p. 2011.

serious cutting incidents in February,[4] that he had been placed in restraints and in a rubber room for long periods,[5] that he was being *forcibly* treated with anti-depressant and anti-psychotic medications,[6] and that he had serious, long-term

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[4] It is noted that Mr. Rodgers reportedly has engaged in two additional episodes of self-mutilation since the time of his last evaluation. One of the episodes occurred on February 15, 2000. Indications are that he engaged in two separate incidents of self-mutilation on February 13. After the first incident, he was reported to be fading in and out of consciousness and was transported to the Santa Rosa Medical Center. After that behavior, he was evaluated by Dr. Montes for a consultation regarding possible psychotropic medication. As mentioned above, Dr. Montes prescribed Remeron and Zyprexa which the defendant has only intermittently taken in the jail setting.

Supplemental Record, p. 2309 (Dr. McClaren). *See also* Vol. 21, p. 1910 (Dr. McClaren); *id* at 2056 (Dr. Benson); *id* at 2059 (Dr. Gilgun). The record contains photographs of Mr. Rodgers's cell covered in blood and feces, and pictures of Mr. Rodgers after a cutting episode. *See* Defendant's Exhibit 5 to the April 3, 2000, competency hearing.

[5]*See* Vol. 21, p. 1985 ("[W]hile he was healing he would re-injure it and bleed more. He was in restraints during that time. These would be extended periods I think that he was in restraints.")(Dr. Benson); *id* at 1997 ("when he has one of these medically dangerous self-mutilating episodes he's in restraints in a rubber room with lots of limitations.")(Dr. Benson); Vol 22, p. 2310("He has been in an isolation cell during his incarceration.") (Dr. McClaren); Vol. 21, p. 1912 (rubber room)(Dr. McClaren).

[6]*See* Vol. 21, p. 2074 (Dr. Gilgun); *id.* at 1942 (Dr. McClaren). Dr. Benson reported that the medication was forced: corrections officers said that "we'll take the shackles and the belly chain off if you'll take your medication." Vol. 21, p. 1998.

psychiatric illnesses.[7] He had improved by the time of the evaluations and was then competent, but one hallmark of his multiple illnesses was "he experiences very wide mood swings," Vol. 23, p. 2066, so he could later become incompetent during the course of the trial.[8] The doctors continued to remark upon Mr. Rodgers's delusional thinking about his mother's "spirit."

8. Defendant's present condition and actions must be evaluated against this detailed psychiatric treatment backdrop. After the reversal of the conviction in this case Defendant was brought to the Santa Rosa County jail on May 28th, 2004. He

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[7]*See* Vol. 22, p. 2062 ("in my mind this man has had **genuine psychiatric problems for years**")(Dr. Gilgun); Vol 21, p. 2080 (depressive disorder, which is recognized throughout years of reports)(Dr. Gilgun); Vol 22, p. 2313 ("Diagnostically, **he probably suffers from Post-traumatic Stress Disorder...He has been repeatedly placed while incarcerated in the Florida Department of Corrections at the Mental Health Unit.**")(Dr. McClaren); Vol 21, p. 1899 ("Well, he has **psychological treatment records going back to childhood,** all kinds of symptoms interspersed through them, whether he's in a private hospital, a reform school, a prison, or a jail. So you get the same symptoms in different places.")(Dr. McClaren); Vol 21, p. 1983 ("Mr. Rodgers has **a very long history of treatment in psychiatric facilities**")(Dr. Benson); Vol. 21, p. 1939, 1947, 1952 (many individuals with this profile receive a diagnosis of **schizophrenic** disorder, are likely to become psychotic, and require pharmcotherapy and treatment in a mental health facility)(Dr. McClaren).

[8]*See* Supplemental Record, p. 2304 ("He is not currently likely to injure himself or others. I must hasten to add that it would not at all surprise me if this situation changes.")(Dr. Gilgun); Vol. 21, p. 1995 (likely to become incompetent again)(Dr. Benson); Vol. 22, pp. 2083-84 (likely to become incompetent again)(Dr. Gilgun); Vol. 21, p. 1995 (likely to become distrustful of lawyers again)(Dr. Benson).

did not see any attorney. On June 3, 2004, he wrote a letter to the court confessing to the crime and saying he wanted to plea guilty. The next day he first met with his attorney.

9. On Sunday, June 6, 2004, the Defendant cut his arm in the antecubital area of his right arm so seriously that he was taken from the jail to the hospital in an ambulance. The next day, June 7, 2004, the defendant entered a no contest plea to the charges herein. Apparently defense counsel (who had first met Defendant one business day earlier) and the Court were unaware of this suicide attempt by Petitioner.

10. These circumstances raise the real probability that Defendant was and is not competent. Dr. Fredderic J. Sautter, Ph.D.,has reviewed materials and offers the following sworn report:

Information Relied Upon

I reviewed summaries of medical records of Jeremiah Martel Rodgers, a detailed social history of Mr. Rodgers presented at his capital murder trial in 2000, summaries of testimony at that trial, particularly the testimony of Dr. Sarah DeLand, Dr. David Foy, and the two competency hearings held prior to trial. The original medical records were made available for my review, although time does not permit full review of Mr. Rodgers' voluminous psychiatric records.

I am informed: That after a relatively lengthy period in which Mr. Rodgers did not self-injure, he was transferred from Death Row in Florida to Santa Rosa County jail. That on Sunday, June 6th, 2004, he

lacerated himself in the antecubital area of his arm so severely that he had to be taken to a hospital by ambulance for treatment. That the next day, on June 7th, he waived his right to go to trial and pled guilty to a charge of attempted murder. That in the past he has consistently admitted to being present during this shooting incident, but has alternatively stated that his co-defendant was the shooter or claimed to be the shooter himself. That Mr. Rodgers did not inform his appellate counsel, Mark Olive, nor his trial counsel, Denise LeBoeuf, that he had been transferred or that he intended to waive his rights and plead guilty.

Preliminary Opinion

Based on the initial review, I am concerned that Mr. Rodgers waiver of his rights and plea of guilty was influenced by his severe mental illness, and may have been influenced by a suicidal wish to die. I recommend that a full competency evaluation be conducted to determine if he was competent to waive his rights on June 7, 2004, when he entered a guilty plea.

I see nothing in the records I have reviewed to dispute Dr. DeLand's diagnosis that Mr. Rodgers was suffering from psychosis and Post-Traumatic Stress Disorder when she testified in 2000, having evaluated him a number of times.

Based on the understanding that the waiver of rights and his guilty plea was against his best interests in the view of his attorneys, I have serious doubts whether Mr. Rodgers could have had a rational, factual understanding of te nature of his guilty plea on June 6th. Mr. Rodgers has one of the most extensive histories of suicidal and self-destructive actions I have ever reviewed. This plea came less than a day after a serious incident of self-laceration. The area Mr. Rodgers lacerated is one where an artery is very close to the skin; causing arterial bleeding must be considered a real suicide attempt, and must be treated as such in the absence of countervailing information. Mr. Rodgers' psychiatric records and his history indicate such a severe level of depression that he must be considered very seriously at risk for suicide. The inconsistency in his response to his legal situation (first

> denying that he was the shooter, then pleading guilty) may point to suicidality. Based on my forensic experience, and my extensive knowledge of psychotic Post-Traumatic Stress Disorder, I would advise a full evaluation of Mr. Rodgers to determine if he could have been competent to proceed on June 7, 2004. I have serious doubts that he could have understood his actions except as an additional suicidal action, or that he was capable of assisting his legal counsel. His understanding of the proceedings, his ability to proceed rationally, and his comprehension of the nature and significance of his waiver of rights and his entering a guilty plea may have been so affected by features of his severe mental disorder that he was not competent to proceed. Without a full competency evaluation, there is a strong possibility that he was either too psychotic at the time of the guilty plea to understand the proceedings, or that he understood the legal proceedings to be a suicidal gesture, rather than a rational response to his legal situation.

See Attachment 1, hereto.

B. Defendant pled no contest to an uncharged crime

1. Defendant entered a no contest plea to attempted felony murder. However, it does not appear that he was charged with that crime.

2. In 1995, the Florida Supreme Court receded from prior jurisprudence and held that there was no such crime as attempted felony murder. *See Gray v. State*, 654 So.2d 552 (Fla.1995). The Court adopted Justice Overton's position from his dissent from *Amlotte v. State*, 456 So.2d 448 (Fla.1984), that felony murder is itself based upon a legal fiction and, "Further extension of the felony murder doctrine so as to make intent irrelevant for purposes of the attempt crime is illogical and without basis in the law." *Gray*, 654 So.2d at 553.

3. In response, the Florida legislature enacted Fla.Stat. 782.051, the attempted felony murder statute. This statute, and **only this statute**, is the appropriate vehicle for charging an individual with attempted felony murder in Florida.

4. Mr. Rodgers was not charged with Attempted First Degree Felony Murder under Fla.Stat. 782.051. The Information filed on June 24, 1998, is *titled* "Attempted First Degree Felony Murder" and "Shooting at, into or Within a Building." However, the Information specifically provides that Mr. Rodgers:

> did unlawfully **from a premeditated design to effect the death of a human being**; to wit: Leighton Smitherman, did attempt to kill and murder said Leighton Smitherman by shooting him with a .380 pistol and did in the process, use carry or possess a weapon, to wit: a .380 caliber pistol, in violation of Sections 782.04 and 777.04 Florida Statutes.

See Attachment 2, *emphasis added.* Fla.Stat. 782.04 is the statute governing murder, while 777.04 is the general attempt, solicitation and conspiracy statute. The Information does not mention of Fla.Stat. 782.051. Further, the highlighted language of "premeditated design" tracks 782.04(1)(a)(1), the premeditated murder portion of first degree. 782.04(1)(a)(2) defines felony murder, but that language regarding "a person engaged in the perpetration of, or in the attempt to perpetrate" enumerated felonies does not appear in the information.

5. The Judgment entered on June 7, 2004, is unclear as well. *See* Attachment 3. It lists Mr. Rodgers' crimes as Attempted First Degree Felony Murder and Shooting at or into a Dwelling. After "Attempted 1st Degree," it appears that the original charge, perhaps premeditated murder, was "whited out" and "Felony Murd" typed over it. The Judgment also provides the relevant statutory cites for the Attempted Felony Murder count as Fla.Stat. 782.04 and 777.04, without reference to Fla.Stat. 782.051.

6. Fla.R.Crim.P. 3.170(b) provides that a defendant can plead guilty to any pending charges. Fla.R.Crim.P. 3.140(d) requires that an information or indictment contain the essential facts and citation to the statute allegedly violated. Mr. Rodgers' charging document contains neither the facts not the citation to support Attempted First Degree Felony Murder. Attempted First Degree Felony Murder and Attempted First Degree Premeditated Murder are two distinct crimes. *See State v. Blanton*, 821 So.2d 440 (5th DCA 2002) and *Gonzalez v. State*, 789 So.2d 1091 (3rd DCA 2001). Furthermore, Fla.R.Crim.P. 3.610(d) provides that the Court shall grant a Motion for Arrest of Judgment if the defendant was convicted of an offense for which he could not be convicted under the information.

WHEREFORE, Defendant, through undersigned counsel, hereby requests to be allowed to withdraw his guilty plea herein.

Respectfully submitted,

MARK E. OLIVE
Fla. Bar No. 0578533
Law Offices of Mark E. Olive, P.A.
320 West Jefferson Street
Tallahassee, Florida 32301
850-224-0004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion is being furnished by U.S. Mail, first class postage prepaid to all counsel of record, this 6th day of July, 2004.

Mark E. Olive

Copies provided to:

The Honorable Mary Johnson
Santa Rosa County Clerk of Court
6865 Caroline St.
Milton, FL 32570-0470

The Honorable Paul Rasmussen
6865 Caroline St.
Box K
Milton, FL 32570

John Molchan
Santa Rosa State Attorney's Office
P.O. Box 645
Milton, FL 32572

Laura Spencer Coleman
Byrom & Hilliard
P.O. Box 685
Milton, FL 32572-0685

Curtis French
The Capitol
Tallahassee, FL 32399-1050

Exhibit F

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

VS. CASE NO. 98-322
DIV. A

JEREMIAH MARTEL RODGERS,

Defendant.

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STATE'S RESPONSE TO MOTION TO SET ASIDE GUILTY PLEA

COMES NOW the State of Florida by and through the undersigned Assistant State Attorney and moves this Honorable Court to strike and deny the motion filed by Mark Olive. Mr. Olive is not the attorney appointed in the above-styled case and thus has no standing to interject himself into these proceedings. Laura Coleman was the attorney of record in this matter before the Trial Court.

Further his motion is based on speculation and conjecture. There is no evidence to support a claim of incompetence on the part of the Defendant. No mental health examination was needed or performed at the time of the plea. Further Mr. Rodgers was alert and aware at the time and a significant plea inquiry transpired in this matter. While there can be no doubt that Mr. Rodgers has a history of mental disorders there was no indication that he was incompetent at the time of the entry of the plea. Additionally, the Defendant wrote letters to the Court prior to his transportation back to Santa Rosa County that clearly indicated his intent to enter a plea in this matter.

As to the claim regarding the charging document, the document clearly outlined the

charge and informed the Defendant of the charge of Attempted Premeditated Murder. His plea to that allegation waives any defect in the instrument.

Accordingly, the State moves this Honorable Court to deny the sought after relief.

DATED this 8 day of July, 2004.

JOHN A. MOLCHAN
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO. 747580

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing is furnished to Mark Olive, Laura Coleman, and Curtis French, by U.S. Mail this 8 day of July, 2004.

JOHN A. MOLCHAN
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO. 747580

Seen By Judge
6-18-04
per JC

Exhibit G

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

JEREMIAH MARTEL RODGERS,
Defendant.

/Case No.: 57-98-322-CFA

FILED
SANTA ROSA COUNTY
CLERK'S OFFICE
2004 JUL 23 P 4:06

DEFENDANT'S MOTION TO STRIKE

COMES NOW, the Defendant, JEREMIAH MARTEL RODGERS, by and through his undersigned counsel and files this his Motion to Strike the pleadings filed by Mark Olive, and deny the relief requested therein, and as grounds therefore, would state:

1. On May 20, 2004, the undersigned, Laura Spencer Coleman, was appointed to represent the Defendant in the above styled cause.

2. Laura Spencer Coleman remains the attorney of record.

3. Laura Spencer Coleman spoke with the Defendant on a number of occasions. Never did the Defendant indicate that he wanted a trial in this matter, nor did the Defendant indicate that he desired the services of Mark Olive. Furthermore, the Defendant gave no indication that he was anything other rational, competent, and well aware of the consequences of his actions.

4. Counsel for the Defendant had the opportunity to speak with the Defendant regarding the consequences of his plea. The Defendant continuously maintained that he wished to enter a guilty plea to the charges, and further evidence of his intent and desire to do so is clearly stated in his letter to the Supreme Court which has already been made a part of the file.

5. Additionally, the Defendant wrote a letter to The Honorable Paul A. Rasmussen, indicating that he desired a plea in this case. That letter has already been made a part of the Court file.

6. Further, The information that Mr. Olive relies on by Dr. Fredderic J. Sautter, is misplaced in that Dr. Sauter has not engaged in any recent evaluations of the Defendant, but is relying on competency reports which were not prepared by him, but by another physician over four years ago.

7. At that time that Mr. Rodgers engaged in the extreme behavior that Mr. Olive speaks of, he was found competent to stand trial.

8. Dr. Sauter has not recently spoken with or interviewed the Defendant, consequently, his claim that the Defendant was influenced by his attorneys is speculative, at best.

9. Furthermore, he indicates that the Defendant's waiver of rights and his guilty plea was against the best interest in the view of his attorneys. Dr. Sauter never contacted the attorney of record in the above styled cause.

10. The Defendant's plea colloquy on June 7, 2004 was quite lengthy and extensive. The Court engaged comprehensive questioning of the Defendant in order to ensure that the Defendant was well aware of the consequences of his actions on June 7, 2004. The Defendant's thought processes were rational, lucid and gave no indication to the Court or to the Defendant's counsel that he was anything other than competent, and well aware of the consequences of his actions.

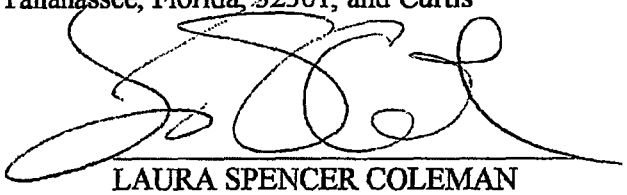
11. The Defendant was well aware of the consequences of the plea, and continuously maintained a desire to enter a plea to the charges, thus waiving any defects therein.

12. Lastly, Mark Olive's statement to the Court that the "Defendant, through undersigned counsel, hereby requests to be allowed to withdraw his guilty plea herein," is misplaced, as the Defendant is not and has not requested to withdraw his guilty plea, but has continued to maintain that he wishes to enter a plea of guilty.

WHEREFORE, the undersigned, on behalf of the Defendant JEREMIAH MARTEL RODGERS, respectfully prays that this Honorable Court enter an order striking the pleadings filed by Mark Olive, as he has no standing to intervene in the above styled proceedings.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been provided to John Molchan, Assistant State Attorney, 5185 Elmira Street, Milton, Florida, 32570, Mark E. Olive, Esquire 320 West Jefferson Street, Tallahassee, Florida, 32301, and Curtis French, The Capitol, Tallahassee, FL 32399-1050.



LAURA SPENCER COLEMAN
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Attorney for the Defendant,
JEREMIAH MARTEL RODGERS

Exhibit H

IN THE CIRCUIT COURT IN AND FOR
SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

JEREMIAH MARTEL RODGERS,

Defendant.
_____/CASE NO.: 57-98-322-CFA-B

ORDER STRIKING MOTION TO SET ASIDE GUILTY PLEA

This matter is before the Court upon the Motion to Set Aside Guilty Plea filed by Mark E. Olive, Esquire purportedly on behalf of the Defendant, Jeremiah Martel Rodgers. Defendant was tried by jury and convicted in the above-styled cause of action. Defendant was also convicted in case number 98-274-CF for the murder of Jennifer Robinson and a death sentence was imposed in that case. An appeal is pending before the Supreme Court of Florida in case number 98-274-CF.

Mark Olive, Esquire represents the Defendant in the appeal pending before the Florida Supreme Court and represented the Defendant in the appeal in the above-styled cause.

The Attempted Murder conviction in the instant case was reversed by the District Court of Appeal, First District and remanded for retrial. Mr. Olive infers that the order appointing him as appellate counsel does not expressly confine said representation to the representation on appeal. However, a review of the record reflects that Mr. Olive filed a Motion for Appointment of Counsel on Appeal on August 9, 2002. On August 13, 2002, this Court entered an order directing the Public Defender in the First Judicial Circuit to advise the Court as to whether or not it had a conflict of interest in representing the Defendant on the appeal. The Public Defender responded by filing a Motion to Withdraw based upon a conflict of interest dated August 21, 2002 and on August 22, 2002, this Court entered an order allowing the Public Defender to withdraw and appointing Mark E.

Olive, Esquire to represent the Defendant. It is clear from the record that the intent of the Court was that Mr. Olive would represent the Defendant for appellate purposes only.

Upon remand, the Court initially reappointed David White, Esquire (Defendant's initial trial counsel) to represent the Defendant at the retrial. Thereafter, David White moved to withdraw and the Court appointed Laura Coleman, Esquire to represent the Defendant. The Defendant then entered a plea of guilty to the charges set forth in the Information in this cause, was sentenced, and returned to the custody of the Department of Corrections.

It is significant to note that the Motion to Set Aside Guilty Plea was signed only by Mark E. Olive, Esquire and was not signed by Defendant, Jeremiah Martel Rodgers, nor joined by Laura Coleman, who is attorney of record for the retrial.

This Court finds that it is clear from a review of the record that Mr. Olive was appointed for appellate purposes only. However, even if it can be argued that the order so appointing him is vague on that issue, the subsequent order appointing Laura Coleman to specifically represent the Defendant at retrial would have served to substitute her as counsel of record for the Defendant. *See generally* Fla.R.Crim.P. 3.111(e)(2).

Fla.R.Jud.Admin. 2.060(c) clearly provides that pleadings filed on behalf of a party who is represented by an attorney shall be signed by the attorney of record. Mr. Olive is not the attorney of record for purposes of retrial.

Accordingly, the Court is of the opinion that Mr. Olive's Motion to Set Aside Guilty Plea purportedly filed on behalf of Defendant should be stricken since Mr. Olive is not counsel of record. The effect of the striking of the motion does not prejudice the Defendant in that the Defendant will

have an opportunity to challenge the voluntariness of his plea due to ineffective assistance of counsel in a motion for post conviction relief filed pursuant to Fla.R.Crim.P. 3.850.[1]

The Court is aware that had the motion been properly filed by either counsel of record or the Defendant, *pro se,* the Defendant would be entitled to a hearing on the motion. *See Hulett v. State,* 830 So.2d 243 (Fla. 4th DCA 2002); *Ventura v. State,* 820 So.2d 1026 (Fla. 4th DCA). Because the motion was not filed by the attorney of record or by the Defendant, it should be stricken, thereby eliminating the necessity of a hearing. Accordingly, it is

ORDERED AND ADJUDGED that the Motion to Set Aside Guilty Plea filed by Mark E. Olive, Esquire is stricken and dismissed.

DONE AND ORDERED in Chambers, Santa Rosa County, Milton, Florida this 3rd day of August, 2004.

Paul A. Rasmussen, Circuit Judge

cc:
gc 08/03/04
- Mark E. Olive, Esquire
- John Molchan, Esquire
- Laura S. Coleman, Esquire
- Curtis French, Esquire
- Jeremiah M. Rodgers, DC# 123101, Union C.I., 7819 N.W. 228th St., Raiford, FL 32026-4000

[1] Without ruling upon the merits of the motion, this Court did not observe anything about the Defendant which would lead the Court to believe that the Defendant was not competent at the time he entered his plea on June 7, 2004. The Court has observed Mr. Rodgers many times in the past and is aware that notwithstanding prior self-mutilating acts, he was determined to be competent. There was nothing that occurred during the plea colloquy on June 7, 2004 that leads this Court to believe that Mr. Rodgers was not competent or that he was not fully aware of his plea and/or ramifications resulting therefrom. Had the Court seen any evidence that the Defendant's competence was at issue, it would not have proceeded with the plea colloquy and sentencing.