

DOCKET NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

ANTONIO LEBARON MELTON,

Petitioner,

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

LINDA McDERMOTT
Florida Bar No. 0102857
McClain & McDermott, P.A.
Attorneys at Law
20301 Grande Oak Blvd.
Suite 118-61
Estero, Florida 33928
Telephone: (850) 322-2172
FAX: (954) 564-5412
lindammcdermott@msn.com

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED--CAPITAL CASE

1. Whether an assessment of the relative culpability of codefendants in a capital case in Florida is required pursuant to the Eighth Amendment in order to ensure the reliability of a death sentence and whether it runs afoul of the prohibition against cruel and unusual punishment?

2. Whether an Eighth Amendment compliant proportionality review requires consideration of the culpability of codefendants, even those who pled guilty and received a lesser sentence as a result?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED--CAPITAL CASE	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
CITATION TO OPINION BELOW	2
STATEMENT OF JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
FACTS RELEVANT TO QUESTIONS PRESENTED	6
THE COURT'S RULING	9
REASONS FOR GRANTING THE WRIT	9
I. THIS COURT SHOULD RESOLVE THE ISSUE OF WHETHER THE FLORIDA SUPREME COURT'S PROPORTIONALITY ANALYSIS IS IN DIRECT CONFLICT WITH THE PRECEDENT OF THIS COURT.	9
CONCLUSION	15
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

CASES	PAGE
<i>Atkins v. Virginia</i> 536 U.S. 304 (2002)	10, 14
<i>Furman v. Georgia</i> 408 U.S. 238 (1972)	10
<i>Godfrey v. Georgia</i> 446 U.S. 420 (1980)	15
<i>Graham v. Florida</i> 560 U.S. 48 (2010)	14
<i>Gregg v. Georgia</i> 428 U.S. 153 (1976)	10, 11, 14
<i>Hurst v. Florida</i> 136 S.Ct. 616 (2016)	5
<i>Kennedy v. Louisiana</i> 554 U.S. 407 (2008)	14
<i>McCloud v. State</i> 208 So. 3d 668 (Fla. 2016)	6, 13
<i>Melton v. Florida</i> 115 S.Ct. 441 (1994)	4
<i>Melton v. Jones, etc.</i> No. SC17-2032 (Fla. Jan. 26, 2018)	2, 6, 9, 13
<i>Melton v. Jones</i> 136 S.Ct. 324 (2015)	5
<i>Melton v. State</i> 638 So. 2d 927 (Fla. 1994)	4
<i>Melton v. State</i> 949 So. 2d 994 (Fla. 2006)	4
<i>Melton v. State</i> No. SC17-1147 (Fla. February 2, 2018)	5
<i>Penry v. Lynaugh</i> 492 U.S. 302 (1989)	9
<i>Proffitt v. Florida</i> 428 U.S. 242 (1976)	10, 11, 12

<i>Roper v. Simmons</i>	
543 U.S. 551 (2005)	13, 14
<i>Scott v. Dugger</i>	
604 So. 2d 465 (Fla. 1992)	13
<i>Shere v. Moore</i>	
830 So. 2d 56 (Fla. 2002)	12
<i>State v. Dixon</i>	
283 So. 2d 1 (Fla. 1973)	11
<i>Weems v. United States</i>	
217 U.S. 349 (1910)	10

DOCKET NO. _____
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

ANTONIO LEBARON MELTON,
Petitioner,
vs.
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

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

Petitioner, **ANTONIO LEBARON MELTON**, is a condemned prisoner in the State of Florida. Petitioner respectfully urges that this Honorable Court issue a writ of certiorari to review the decision of the Florida Supreme Court.

CITATION TO OPINION BELOW

The decision of the Florida Supreme Court in this cause appears as *Melton v. Jones, etc.*, No. SC17-2032 (Fla. Jan. 26, 2018), and is attached to this petition as Appendix A.

STATEMENT OF JURISDICTION

The Florida Supreme Court entered its order on January 26, 2018, rehearing denied on March 13, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257, with Petitioner having asserted in the state court below and asserting in this Court that the State of Florida has deprived him of rights secured by the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

No persons . . . shall . . . be deprived of life, liberty or property, without due process of law.

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

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

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

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

On January 23, 1991, Antonio Melton and Bendleon Lewis were arrested for killing pawn shop owner George Carter. Thereafter, on February 5, 1991, both codefendants were charged by indictment

for first degree murder and armed robbery with a firearm (R. 1117). Melton proceeded to trial during which Lewis testified as a State witness (R. 1623).

On January 30, 1992, Melton's jury returned verdicts of guilty of first degree felony murder and robbery with a firearm (R. 895-96, 1275-76). The jury recommended death by a vote of eight (8) to four (4) (R. 1112, 1285). On May 19, 1992, the trial court imposed a sentence of death for the murder and life imprisonment on the armed robbery (R. 1380-1401, 1413-22).

Less than a month after Melton was sentenced to death, Lewis pled *nolo contendere* to second degree murder and robbery with a firearm. Lewis was sentenced to twenty (20) years on each conviction, though his time would run concurrently. In fact, Lewis served just over eight (8) years before being released on probation.¹

During his direct appeal proceedings, Melton raised a claim based on proportionality. *Melton v. State*, FSC Case No. 79,959, Initial Brief of Appellant at 41-46. Within that claim, Melton asserted as a mitigating factor the disparate treatment of his sentence in comparison to that of his codefendant, Lewis. *Id.* at 45-46.² In its opinion, while the Florida Supreme Court addressed

¹Lewis was later found to have violated his probation and was re-incarcerated.

²Melton stated the following:

Fifth, another mitigating factor is the disparate treatment of Melton's accomplice. E.g., *Pentecost v. State*, 545 So.2d 861 (Fla. 1989); *Harmon v. State*, 527 (continued...)

whether Melton's sentence was disproportionate to other factually similar cases, it never considered the disparate treatment issue. *Melton v. State*, 638 So. 2d 927, 930-31 (Fla. 1994). The Florida Supreme Court proceeded to affirm Melton's convictions and sentences. *Id.* Melton filed a petition for a writ of certiorari in this Court, which was denied on October 31, 1994. *Melton v. Florida*, 115 S.Ct. 441 (1994).

Melton proceeded to file a postconviction motion in the state circuit court on January 16, 1996 (PCR. 74-200). Following several amendments and an evidentiary hearing, the circuit court issued an order denying relief on March 23, 2004 (PCR. 1937-2018). On appeal, the Florida Supreme Court affirmed. *Melton v. State*, 949 So. 2d 994 (Fla. 2006). Rehearing was denied on February 15, 2007, and the Florida Supreme Court's mandate issued on March 5, 2007.

On March 3, 2008, Melton filed a federal habeas petition in the Northern District of Florida (Doc. 1). The petition was denied on May 31, 2013, and the district court declined to issue a certificate of appealability (COA) (Doc. 33 at 91). Melton

²(...continued)

So.2d 182 (Fla. 1988); Caillier v. State, 523 So.2d 158 (Fla. 1988); Brookings v. State, 495 So.2d 135 (Fla. 1986); McC Campbell v. State, 421 So.2d 1072 (Fla. 1982); Slater v. State, 316 So.2d 539 (Fla. 1975). Even though Lewis had not been convicted or sentenced at the time of the trial, he anticipated, as did the trial judge, that he would receive a lesser punishment. (R 640-45, 977-983, 1417-1418) Although Lewis was not the triggerman, his involvement was no less culpable - - he provided a gun and fully participated in the crime.

Id. at 45-46.

filed a motion for reconsideration on June 14, 2013, which the district court denied on July 15, 2013 (Docs. 35, 41).³ The Eleventh Circuit Court of Appeals thereafter affirmed the denial of a COA, and on October 13, 2015, this Court denied Melton's petition for a writ of certiorari. *Melton v. Jones*, 136 S.Ct. 324 (2015).

Melton subsequently filed several successive motions for postconviction relief in the state circuit court, the latest of which concerned issues arising from this Court's decision in *Hurst v. Florida*, 136 S.Ct. 616 (2016). On April 13, 2017, the circuit court denied Melton's *Hurst* motion. Melton appealed, and the Florida Supreme Court issued an order to show cause as to "why the trial court's order should not be affirmed in light of this Court's decision in Hitchcock v. State, SC17-445." *Melton v. State*, No. SC17-1147 (Fla. Sept. 25, 2017). Following responses by each party, the Florida Supreme Court on February 2, 2018, issued an opinion affirming the denial of Melton's postconviction motion. *Melton v. State*, No. SC17-1147 (Fla. February 2, 2018).

On November 16, 2017, Melton filed a state habeas petition, asserting that his death sentence was unconstitutionally unreliable and in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Melton asserted that in light of the Florida Supreme Court's recent

³Meanwhile, on June 29, 2013, Melton filed a notice of appeal (Doc. 36).

decision in *McCloud v. State*, 208 So. 3d 668 (Fla. 2016)⁴, the court should revisit its previous determination and consider whether Melton's death sentence constitutes disparate treatment in light of codefendant Lewis' lesser sentence.

Melton's petition was denied by the Florida Supreme Court on January, 2018. *Melton v. Jones, etc.*, No. SC17-2032 (Fla. Jan. 26, 2018). Rehearing was denied on March 13, 2018.

FACTS RELEVANT TO QUESTIONS PRESENTED

On January 23, 1991, Lewis and Melton were arrested for killing pawn shop owner George Carter. They were caught leaving the pawn shop immediately after Carter was shot (R. 501-02). Lewis was apprehended with a bag filled with merchandise from the pawn shop, including several firearms (R. 508-9); Melton had a .38 caliber firearm on his person (R. 502).

At Melton's trial, both he and Lewis testified. However, both presented a different version of what occurred while in the pawn shop. In the State's case, Lewis testified that Melton asked him to assist him in robbing the pawn shop mid-day on January

⁴In *McCloud*, 208 So. 3d at 687, the Florida Supreme Court recognized its prior holdings that the relative culpability of a codefendant is implicated only when the codefendant has been found guilty of the same degree of murder. The court proceeded to "reject this limitation, because we do not see the utility in a blanket rule prohibiting a relative culpability analysis when a codefendant is convicted or pleads guilty to a different degree of murder than the primary defendant." *Id.* Indeed, the Florida Supreme Court rejected "any principle of law that hamstring[s] this Court's ability to conduct a full proportionality review, including a relative culpability analysis, simply because the State allowed a codefendant to enter a plea to murder that resulted in a life sentence." *Id.* at 688. Rather, according to the court, "Where factual findings clearly establish that the less culpable defendant is the only defendant receiving a death sentence, that error must be rectified." *Id.*

23rd (R. 626). Lewis obtained an unloaded firearm from Phillip Parker (R. 627). Lewis and Melton met at Joseph Mims' house at 5:00 p.m. where they took gloves from Mims' bathroom (R. 628-29). The two walked to the pawn shop and eventually entered (R. 632).

The rouse was that Lewis would pretend to sell his necklace so that Melton could steal some jewelry (R. 632). But, Lewis saw that Carter had a weapon in a holster and grabbed Carter's hands (R. 633). Lewis took the weapon and gave it to Melton (R. 634). Lewis began to put items into the bag and then went to the safe to take additional items (R. 634-5). Lewis went to open the side door so that the two could leave when he heard a shot (R. 636). He did not see a scuffle before the shot (R. 637).⁵

Melton testified that it was Lewis who contacted him on January 23, 1991 (R. 680). The two met later that day and went for a walk (R. 682). They discussed making some money so that they could buy more alcohol (R. 683). They decided to go to the pawn shop and attempt to steal some jewelry (R. 684). When they entered the store, Lewis began discussing pawning his necklace with Carter (R. 684-85). Melton attempted to take a ring when Carter saw him (R. 686). Lewis grabbed Carter's hands and Melton took the weapon that Carter had (R. 686).

Lewis began taking jewelry and other items (R. 687). Shortly thereafter, Carter rushed Melton and Melton lost his balance (R. 691). Lewis came over and punched Carter (R. 692).

⁵In closing, the State asserted that Melton intended to kill Carter even before the two entered the pawn shop and that there was no struggle (R. 782, 784, 810).

Carter fell and as he attempted to get up, he grabbed the firearm in Melton's hand (R. 694). A struggle ensued and the gun went off (R. 695).

Evidence subsequent to trial has confirmed Melton's account. Indeed, Lewis himself confessed to numerous individuals that his version of events was false. While in the Escambia County Jail prior to trial, Lewis told another inmate, Paul Sinkfield, that he got into a struggle with the pawn shop owner, that Melton ran over to help and that's when the gun went off and killed the victim (T. 456). Lewis also told inmate Fred Harris that he, Melton and the victim were wrestling, the gun went off, and the owner was shot (T. 635). Lewis stated that the pawn shop owner was holding the gun when it went off (T. 647).

In 2013, Lewis discussed the pawn shop case with investigators from Melton's defense team (PCR2. 113, 191). Lewis was emotional, "teary" and seemed somewhat relieved to talk to them (PCR2. 123-4, 192). During the conversation, Lewis "acknowledged and stated that there was, indeed, a struggle [at the pawn shop] and during the struggle is when the weapon discharged." (PCR2. 114, 193). Lewis affirmed the previous testimony of individuals whom he had told that a struggle occurred when the weapon discharged (PCR2. 194).⁶

⁶At a subsequent evidentiary hearing, Lewis acknowledged meeting with the investigators but denied admitting that a struggle occurred when the shot was fired that killed Carter (PCR2. 163-64).

THE COURT'S RULING

In denying Melton's claim that the disparate treatment of himself and his codefendant rendered his punishment disproportionate, the Florida Supreme Court stated:

Petitioner Antonio Lebaron Melton, a prisoner under a sentence of death, has filed a successive petition for writ of habeas corpus contending that he is entitled to relief pursuant to McCloud v. State, 208 So. 3d 668 (Fla. 2016) (plurality opinion). Having considered the petition, the response, and the reply, the petition is hereby denied. See Jeffries v. State, 222 So. 3d 538, 547 (Fla. 2017) (plurality opinion) (noting that the Court has "historically refused to review the relative culpability of codefendants when a codefendant pleads guilty and receives a lesser sentence as a result"); see also Melton v. State, 638 So. 2d 927, 929 (Fla. 1994) ("[T]he evidence is clear that Melton held a .38-caliber gun on Carter and fired the fatal shot."); Melton v. State, 949 So. 2d 994, 1012 (Fla. 2006) ("Melton . . . testified to the[e] jury that he was the triggerman. Thus, his role in the crime was already established."); Melton v. State, 193 So. 3d 881, 885-86 (Fla. 2016) (noting that "the gun . . . Melton used fired the fatal shot. Additionally, the State presented evidence that Melton was found in possession of the gun, and the blood of the victim, who was shot at close range, was found on Melton's person.").

Melton v. Jones, etc., No. SC17-2032 (Fla. Jan. 26, 2018).

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD RESOLVE THE ISSUE OF WHETHER THE FLORIDA SUPREME COURT'S PROPORTIONALITY ANALYSIS IS IN DIRECT CONFLICT WITH THE PRECEDENT OF THIS COURT.

Melton submits that this Court should grant certiorari to consider whether the Florida Supreme Court's denial of relief was based on a flawed legal and factual analysis. Underlying Eighth Amendment jurisprudence is the principle that punishment should be directly related to the personal culpability of the criminal defendant. *See Penry v. Lynaugh*, 492 U.S. 302, 319 (1989). Where

punishment is not directly related to, or exceeds the culpability of the defendant, it runs afoul of the Eighth Amendment. See *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) ("it is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense.") (citing *Weems v. United States*, 217 U.S. 349, 367 (1910)).

In Florida, an essential part of the death penalty scheme is the state supreme court's proportionality review. *Proffitt v. Florida*, 428 U.S. 242, 251 (1976). Indeed, proportionality review is one way that this Court has determined that Florida is fulfilling its obligation under *Furman v. Georgia*, 408 U.S. 238 (1972), which "mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." *Gregg v. Georgia*, 428 U.S. 153, 189 (1976) (plurality opinion).

In *Gregg*, the plurality pointed to Georgia's statute which was designed to require automatic review of death sentences to determine "whether the sentence is disproportionate compared to those sentences imposed in similar cases" to be "an important additional safeguard against arbitrariness and caprice." 428 U.S. at 198.⁷ Most succinctly, "the proportionality requirement on

⁷The *Gregg* Court described Georgia's proportionality review:

In short, Georgia's new sentencing procedures require as a prerequisite to the imposition of the death
(continued...)

review is intended to prevent caprice in the decision to inflict the death penalty." *Id.* at 203.

Likewise, in *Profitt*, in upholding Florida's newly revised capital sentencing statute, the plurality again pointed to the Florida Supreme Court's proportionality review as part of the "procedures like those used in Georgia, [that] appear to meet the constitutional deficiencies identified in *Furman*." 428 U.S. at 251.⁸ Indeed, this Court stated that the Florida Supreme Court's automatic appellate review of death sentences "minimized" the "risk" that a death sentence would "be imposed in an arbitrary and capricious manner." *Id.* at 252-53. Specifically, the plurality stated:

Under Florida's capital-sentencing procedures, in sum, trial judges are given specific and detailed guidance

⁷(...continued)

penalty, specific jury findings as to the circumstances of the crime or the character of the defendant.

Moreover, to guard further against a situation comparable to that presented in *Furman*, the Supreme Court of Georgia compares each death sentence with the sentences imposed on similarly situated defendants to ensure that the sentence of death in a particular case is not disproportionate.

428 U.S. at 198 (emphasis added).

⁸The *Proffitt* Court specifically referenced the Florida Supreme Court's opinion in *State v. Dixon*, 283 So. 2d 1, 7 (Fla. 1973), which upheld and described Florida's newly revised capital sentencing statute. In *Dixon*, the Florida Supreme Court held that proportionality review "guarantees that the reasons present in one case [for imposition of the death penalty] will reach a similar result to that reached under similar circumstances in another case." 283 So. 2d at 1, 10. Moreover, in *Dixon*, the Florida Supreme Court emphasized the "reasonable and controlled, rather than capricious and discriminatory" discretion that was included in Florida's capital sentencing statute requiring review by the court. *Id.* at 7, 8.

to assist them in deciding whether to impose a death penalty or imprisonment for life. **Moreover, their decisions are reviewed to ensure that they are consistent with other sentences imposed in similar circumstances. Thus, in Florida, as in Georgia, it is no longer true that there is 'no meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not'.**

Proffitt, 428 U.S. at 253 (emphasis added)(citations omitted).

Further illustrating the importance of the Florida Supreme Court's proportionality review to being an anchor to the Eighth Amendment's requirement of reserving the death penalty for the worst offenders, the *Proffitt* plurality stated:

[I]t is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences.

Id. at 258-59 (citations omitted). Such a "provision [was] designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants" and thus, was central to the Eighth Amendment analysis. *Id.* at 258.

Clearly, the Florida Supreme Court has an independent obligation to review each case where a death sentence is imposed. And in cases where codefendants are involved in the commission of a crime, the Florida Supreme Court performs an additional analysis of relative culpability. *Shere v. Moore*, 830 So. 2d 56, 60 (Fla. 2002). The Florida Supreme Court has explained that "[e]ven when a codefendant has been sentenced subsequent to the sentencing of the defendant seeking review on direct appeal, it is proper for this Court to consider the propriety of the

disparate sentences in order to determine whether a death sentence is appropriate given the conduct of all participants in committing the crime." *Scott v. Dugger*, 604 So. 2d 465, 468 (Fla. 1992). Additionally, in upholding its obligation in determining relative culpability, the Florida Supreme Court recently rejected "any principle of law that hamstrings this Court's ability to conduct a full proportionality review, including a relative culpability analysis, simply because the State allowed a codefendant to enter a plea to murder that resulted in a life sentence." *McCloud*, 208 So. 3d at 688.

Yet, despite this Court's jurisprudence, the Florida Supreme Court's decision in *McCloud*, and the dictates of the Eighth Amendment, Melton resides on Florida's death row while his equally or more culpable codefendant, Lewis, was released from prison in 2000. The Florida Supreme Court in its order clung to its historical refusal "to review the relative culpability of codefendants when a codefendant pleads guilty and receives a lesser sentence as a result." *Melton*, No. SC17-2032 at 1. In doing so, the Florida Supreme Court overlooked the significant Eighth Amendment defect infecting Melton's death sentence. The court neither mentioned nor explained how the truncated proportionality review withstands the Eighth Amendment mandate that: "Capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (citations

omitted); see also *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008).

Given that the concept of proportionality is central to the Eighth Amendment, see *Graham v. Florida*, 560 U.S. 48, 59 (2010), the notion that a defendant could receive a greater punishment than his equally or more culpable counterpart on the basis of a legal technicality runs afoul of this concept and does not “prevent caprice in the decision to inflict the [death] penalty.” *Gregg*, 428 U.S. at 203. Aside from evidence establishing Lewis’ culpability in the crime, further evidence has been presented to the effect that Melton, who was eighteen years, twenty five days old at the time of the instant offense,⁹ was a follower and that the older Lewis was a leader. According to mental health and lay witness testimony, Melton lacks emotional maturity and could be easily manipulated by others (T. 381-83, 752). He had a sheltered life and looked up to people like Lewis who had street knowledge and seemed wiser (T. 664-66). Melton viewed Lewis as more sophisticated than himself (T. 383).

Melton submits that his sentence is being carried out in an arbitrary and capricious manner, as he is less deserving of the death penalty than his codefendant. See *Atkins*, 536 U.S. at 319 (“[O]ur jurisprudence has consistently confined the imposition of the death penalty to a narrow category of the most serious crimes. . . . [T]he culpability of the average murderer is insufficient to justify the most extreme sanction available to the State”); *Roper v. Simmons*, 543 U.S. at 568 (“Capital

⁹Melton’s date of birth is December 29, 1972. The offense in the instant case occurred on January 23, 1991.

punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" (citation omitted); *Godfrey v. Georgia*, 446 U.S. 420, 427 (1980) ("[T]he penalty of death may not be imposed under sentencing procedures that create a substantial risk that the punishment will be inflicted in an arbitrary and capricious manner.").

CONCLUSION

Based on the foregoing, Petitioner submits that certiorari review is warranted to review the decision of the Florida Supreme Court in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing petition has been furnished by electronic service to Charmaine Millsaps, Office of the Attorney General, 400 South Monroe Street, PL-01, Tallahassee, FL 32399-6536, on this 8^h day of June, 2018.

/s/. Linda McDermott
LINDA McDERMOTT
Florida Bar No. 0102857
McClain & McDermott, P.A.
Attorneys at Law
20301 Grande Oak Blvd.
Suite 118-61
Estero, Florida 33928
Telephone: (850) 322-2172
FAX: (954) 564-5412
lindammcdermott@msn.com

Counsel for Mr. Melton