

No. _____

In the Supreme Court of the United States

KENNETH DARCELL QUINCE A/K/A RASIKH ABDUL-HAKIM,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

DEATH PENALTY CASE

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Appendix A.

233 So.3d 1017
Supreme Court of Florida.

Kenneth Darcell QUINCE, Appellant,
v.

STATE of Florida, Appellee.

No. SC17-931

[January 18, 2018]

Synopsis

Background: Defendant, whose death sentence had been upheld by the Supreme Court, 414 So.2d 185, filed a successive motion for postconviction relief. The Circuit Court, Volusia County, Raul Antonio Zambrano, J., summarily denied motion. Defendant appealed.

[Holding:] The Supreme Court held that defendant was not entitled to relief under the United States Supreme Court decision of *Hurst v. Florida*, 136 S.Ct. 616.

Affirmed.

Pariente, J., concurred in the result and filed opinion.

Canady, J., concurred in the result.

An Appeal from the Circuit Court in and for Volusia County, Raul Antonio Zambrano, Judge—Case No. 642017CF101850XXXADL

Attorneys and Law Firms

James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, Raheela Ahmed, Maria Christine Perinetti, and Lisa Marie Bort, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida, for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Doris Meacham, Assistant Attorney General, Daytona Beach, Florida, for Appellee

Opinion

PER CURIAM.

Kenneth Darcell Quince, a prisoner under sentence of death, appeals the trial court's order summarily denying his successive motion for postconviction relief, which was filed under Florida Rule of Criminal Procedure 3.851. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const. For the reasons we explain, we affirm the denial of relief.

In 1980, Quince pleaded guilty to first-degree felony murder and burglary of a dwelling and, after waiving his right to a penalty phase jury, was sentenced to death. We affirmed Quince's death sentence on direct appeal. Quince v. State, 414 So.2d 185, 189 (Fla. 1982). Quince filed an initial motion for postconviction relief, the denial of which was eventually affirmed on appeal. See Quince v. State, 732 So.2d 1059 (Fla. 1999); Quince v. State, 592 So.2d 669 (Fla. 1992); Quince v. State, 477 So.2d 535 (Fla. 1985). We also affirmed the denial of a successive motion for postconviction relief, in which Quince sought to vacate his death sentence on the ground that he is ineligible for the death penalty due to intellectual disability. Quince v. State, No. SC11-2401, 2012 WL 6197458, at *1–2 (Fla. Dec. 10, 2012) (116 So.3d 1262 (table)).

On January 9, 2017, Quince filed another successive motion for postconviction relief in light of Hurst v. Florida, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), which is the subject of this appeal. After *1018 holding a case management conference, the trial court summarily denied Quince's successive motion on two grounds. First, because Quince's sentence became final on October 4, 1982, when the United States Supreme Court denied his petition for a writ of certiorari, the trial court concluded that Quince was not entitled to relief based on our decision in Asay v. State, 210 So.3d 1, 22 (Fla. 2016), cert. denied, — U.S. —, 138 S.Ct. 41, 198 L.Ed.2d 769 (2017), holding that Hurst does not apply retroactively to defendants whose death sentences became final before the issuance of Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), on June 24, 2002. Second, because Quince knowingly, intelligently, and voluntarily waived his right to a penalty phase jury, the trial court concluded that Quince was not entitled to relief based on our decision in Mullens v. State, 197 So.3d 16, 40 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 672, 196 L.Ed.2d 557 (2017), holding that a defendant who

waives his Sixth Amendment right to jury factfinding in his sentencing proceeding is not entitled to relief under Hurst. After Quince filed his notice of appeal in this Court, we directed the parties to file briefs addressing why the trial court's order denying the successive motion should not be affirmed based on Mullens.

In Mullens, we held that a defendant “cannot subvert the right to jury factfinding by waiving that right and then suggesting that a subsequent development in the law has fundamentally undermined his sentence.” 197 So.3d at 40. We have since consistently relied on Mullens to deny Hurst relief to defendants who waived a penalty phase jury. E.g., Covington v. State, 228 So.3d 49, 69 (Fla. 2017); Knight v. State, 211 So.3d 1, 5 n.2 (Fla. 2016); Robertson v. State, No. SC16-1297, 2016 WL 7043020, at *1 n.1 (Fla. Dec. 1, 2016) (unpublished); Davis v. State, 207 So.3d 177, 212 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 2218, 198 L.Ed.2d 663 (2017); Brant v. State, 197 So.3d 1051, 1079 (Fla. 2016). Quince made a valid waiver of his right to a penalty phase jury, and his arguments here do not compel a departure from our precedent. Accordingly, because Quince waived his right to a penalty phase jury, he is not entitled to Hurst relief.

Moreover, because Quince's sentence became final nearly twenty years before Ring was decided, his Hurst claim is also foreclosed by our decision in Asay. See Hitchcock v. State, 226 So.3d 216, 217 (Fla.), cert. denied, — U.S. —, 138 S.Ct. 513, 199 L.Ed.2d 396 (2017); Asay, 210 So.3d at 22; see also Lambrix v. State, 227 So.3d 112, 113 (Fla.) (rejecting argument that the Eighth Amendment, equal protection, and due process require that Hurst be applied retroactively to defendant whose sentences were

final prior to Ring), cert. denied, — U.S. —, 138 S.Ct. 312, 199 L.Ed.2d 202 (2017). We therefore affirm the trial court's order denying Quince's successive motion for postconviction relief.

It is so ordered.

LABARGA, C.J., and LEWIS, QUINCE, POLSTON, and LAWSON, JJ., concur.

PARIENTE, J., concurs in result with an opinion.

CANADY, J., concurs in result.

PARIENTE, J., concurring in result.

I concur in result based on this Court's opinion in Mullens v. State, 197 So.3d 16 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 672, 196 L.Ed.2d 557 (2017), but adhere to my view that Hurst¹ should be *1019 retroactive without the cut-off date of the United States Supreme Court's decision in Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). See Asay v. State (Asay VI), 224 So.3d 695, 708–09 (Fla. 2017) (Pariente, J., dissenting). In this case, because Quince waived his right to a penalty phase jury, Hurst does not apply.

¹ Hurst v. State (Hurst), 202 So.3d 40 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017).

All Citations

233 So.3d 1017, 43 Fla. L. Weekly S15

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Appendix B.

Supreme Court of Florida

THURSDAY, JUNE 29, 2017

CASE NO.: SC17-931
Lower Tribunal No(s):
642017CF101850XXXADL

KENNETH DARCELL QUINCE vs. STATE OF FLORIDA

Appellant(s)

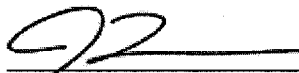
Appellee(s)

The parties in the above case are directed to file briefs addressing why the lower court's order should not be affirmed based on this Court's precedent in Mullens v. State, 197 So. 3d 16 (Fla. 2016). Parties may include a brief statement to preserve arguments as to the merits of this Court's previously decided cases, as deemed necessary, without additional argument.

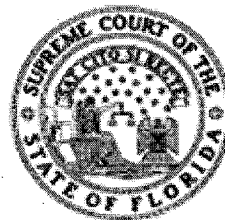
Appellant's initial brief, which is not to exceed twenty-five pages, is to be filed by July 19, 2017. Appellee's answer brief, which shall not exceed fifteen pages, shall be filed ten days after filing of appellant's initial brief. Appellant's reply brief, which shall not exceed ten pages, shall be filed five days after filing of Appellee's answer brief.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



tw

Served:

RAHEELA AHMED
MARIA CHRISTINE PERINETTI
LISA MARIE BORT
TAYO POPOOLA

No. _____

In the Supreme Court of the United States

KENNETH DARCELL QUINCE A/K/A RASIKH ABDUL-HAKIM,
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Appendix C.

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA

v.

KENNETH DARCELL QUINCE,

Defendant.

CASE NO.:

1980-00048 CFAES

CLERK CASE NO.:

1992-030399 XXAES

**ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE SENTENCE
OF DEATH PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.851**

This matter came before the Court for consideration of the Defendant's "Successive Motion to Vacate Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851," filed on January 9, 2017. The Court, having considered the motion, the State's response, and the case management conference held on March 20, 2017, having reviewed the court file, and being fully advised in the premises, hereby finds as follows:

PROCEDURAL HISTORY

On August 11, 1980, Defendant pled guilty to first-degree felony murder and burglary. Defendant waived the right to a sentencing jury. On October 21, 1980, the trial court sentenced Defendant to death upon the finding of three aggravating circumstances and one mitigating circumstance. *Quince v. State*, 414 So. 2d 185 (Fla. 1982), *cert. denied*, 459 U.S. 895, 103 S.Ct. 192, 74 L.Ed. 2d 155 (1982). The trial court found the following aggravating circumstances: 1) the murder was committed during the commission of a rape; 2) the murder was committed for pecuniary gain; and 3) the murder was heinous. *Id.* The trial court found Defendant's inability to appreciate the criminality of his conduct as a mitigating circumstance that deserved little weight. *Id.* On direct appeal, Defendant's sentence of death was affirmed. *Id.* On October 4, 1982, the United States Supreme Court denied Defendant's petition for certiorari. *Quince v. State*, 459 U.S. 895, 103 S.Ct. 192, 74 L.Ed. 2d 155 (1982).

On July 5, 1983, Defendant filed a motion for postconviction relief, which was denied by the trial court and affirmed on appeal. *Quince v. State*, 477 So. 2d 535 (Fla. 1985), *cert. denied*, 475 U.S. 1132, 106 S. Ct. 1662, 90 L.Ed.2d 204 (1986). Defendant then filed a successive motion for postconviction relief, which was denied by the trial court after being remanded for an evidentiary hearing. The trial court's denial was later affirmed on appeal. *Teffeteller v. Dugger*, 676 So. 2d 369 (Fla. 1996); *Quince v. State*, 732 So. 2d 1059 (Fla. 1999). On November 1, 2004, Defendant filed a second successive motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851 and 3.203 which was denied by the trial court and affirmed on appeal. *Quince v. State*, 116 So. 3d 1262 (Fla. 2012). On May 21, 2015, Defendant filed a renewed motion for determination of intellectual disability as a bar to execution under Florida Rule of Criminal Procedure 3.203 and Florida Statute section 921.137, which was denied by the trial court, and is currently pending on appeal. On January 9, 2017, Defendant filed a third successive motion for postconviction relief in light of *Hurst v. Florida*, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016).

ANALYSIS & RULING

In his sole claim, Defendant alleges that his sentence is unconstitutional under *Hurst v. Florida*, and that he is entitled to the retroactive effect of *Hurst* under federal law. Defendant also alleges that his waiver of an advisory jury recommendation for the penalty phase was unconstitutional because it was not appropriate or unequivocal.

The Court finds that Defendant's allegation is without merit. The Florida Supreme Court has held that *Hurst* should not be applied retroactively to defendants whose death sentences became final before the issuance of *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), or before June 24, 2002. *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016), *reh'g denied*, SC16-102, 2017 WL 431741 (Fla. Feb. 1, 2017). In the instant case, Defendant's death sentence

became final on October 4, 1982, when the United States Supreme Court denied Defendant's petition for writ of certiorari. Thus, Defendant is not entitled to relief under *Hurst* because his death sentence became final before *Ring*.

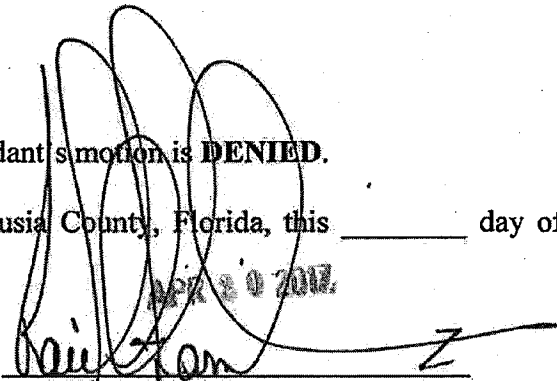
Furthermore, the Florida Supreme Court has held that a defendant who waived his Sixth Amendment right to jury factfinding in sentencing procedure is not entitled to relief under *Hurst*. *Mullens v. State*, 197 So. 3d 16, 38 (Fla. 2016), *reh'g denied*, SC13-1824, 2016 WL 4377112 (Fla. Aug. 9, 2016), and *cert. denied*, 137 S. Ct. 672 (2017). Here, Defendant waived his right to jury sentencing when he pleaded guilty to first-degree murder and burglary. See Exhibit A, Transcript of Plea and Sentencing Hearing dated August 11, 1980, pages 5-7. The trial judge conducted a thorough colloquy and asked Defendant if he understood that he was subject to sentences of either death or life imprisonment. *Id.* at pages 6-17. The trial judge then confirmed with Defendant's trial counsel that Defendant fully understood the effects of the plea negotiations. *Id.* at page 15. Thus, based on the record, the Court finds that Defendant knowingly, intelligently, and voluntarily waived his right to jury sentencing.

Accordingly, Defendant's motion is denied.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that Defendant's motion is **DENIED**.

DONE AND ORDERED in DeLand, Volusia County, Florida, this _____ day of April, 2017.


RAUL A. ZAMBRANO
CIRCUIT JUDGE

Note: Defendant is advised that he has the right to appeal within 30 days of the rendition of this final order.

Copies to:

Kenneth Quince, D.C.#075812, Union Correctional Institution, P.O. Box 1000, Raiford, Florida 32083

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Hon. Laura E. Roth, Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA**

STATE OF FLORIDA

v.

CASE NO.:

1980-00048 CFAES

CLERK CASE NO.:

1992-030399 XXAES

KENNETH DARCELL QUINCE,

Defendant.

EXHIBIT "A"

**HONORABLE RAUL A. ZAMBRANO
CIRCUIT JUDGE**

File

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR VOLUSIA COUNTY
CASE NUMBER 80-48-CC

STATE OF FLORIDA)

vs.)

KENNETH DARCELL QUINCE,)
Defendant.)

FILED IN THE OFFICE OF THE
CLERK OF THE CIRCUIT COURT
VOLUSIA COUNTY, FLORIDA

APR 28 1981

V. T. SMITH, CLERK

By _____ Deputy Clerk

Volusia County Courthouse
DeLand, Florida
August 11, 1980
9:00 A.M.

TRANSCRIPT OF PROCEEDINGS

The above-styled cause came on to be heard before the
Honorable S. James Foxman, Circuit Judge, at the time
and place above indicated.

PRESENT: LAWRENCE NIXON, Esquire
Assistant State Attorney
on behalf of the State of Florida

HOWARD B. PEARL, Esquire
Assistant Public Defender
on behalf of defendant

KENNETH DARCELL QUINCE
Defendant

ROBIN F. SUOMI
Deputy Official Court Reporter
Seventh Judicial Circuit of Florida

Others as may appear in the transcript

WHEREUPON the following proceedings were had:

PHILIP J. CHANFRAU & ASSOCIATES
COURT REPORTERS

P. O. BOX 5008

DAYTONA BEACH, FLORIDA

1 THE COURT: The next matter to come before the
2 Court is the case of the State of Florida versus
3 Kenneth Darcell Quince.

4 This is Case Number 80-48-CU.

5 Kenneth Darcell Quince.

6 Let the record reflect that Kenneth Darcell Quince
7 is here before the Court. He is represented by Mr.
8 Pearl, of our Public Defender's office. Mr. Nixon
9 represents the State.

10 Mr. Pearl, I understand there is a motion before
11 the Court at this time that was filed this morning, a
12 motion to dismiss.

13 MR. PEARL: Yes, Your Honor. It is captioned
14 motion to dismiss, but it is in essence a motion to
15 compel the State to elect whether to dismiss Count 2,
16 charging sexual battery, or Count 3, charging burglary,
17 as one of those two counts as the underlying felony to
18 Count 1, which is a charge of murder in the first
19 degree.

20 And although the charge is that Mr. Quince effected
21 the death of the victim by a premeditated design, it is
22 in fact a charge of felony murder, which was committed
23 either during the burglary or during the sexual
24 battery.

25 As authority for my motion, I would like to cite

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1 to the Court the case of State of Florida versus
2 Pinder, P-i-n-d-e-r, 375 Southern Reporter 2d, 836,
3 a decision of the Supreme Court of Florida of 1979,
4 which I submit to the Court is controlling, and in
5 fact almost identical to the situation we have in this
6 case today.

THE COURT: State.

MR. NIXON: Your Honor, the State would concede
the merits of the motion insofar as that the motion is
really a request of the State to elect to merge one of
the underlying felony counts contained in the indict-
ment into the murder count as charged.

The State is electing to merge Count 2 with Count 1
as far as the factual basis, and that the matter is
now before the Court upon stipulation by the State, in
view of the defendant's motion under the authority of
State v. Pinder, that the murder in the first degree,
that the underlying facts of that will be a murder
felony involving the commission of sexual battery, and
that the plea that is to be entered in this case,
based on prior representation before the Court, will be
as to Count 1 and Count 3 only.

THE COURT: So in other words, Count 2 is dis-
missed?

MR. NIXON: Insofar, Your Honor, as it's dismissed

in terms of the formality of the indictment, yes, sir,
it is.

MR. PEARL: Your Honor, that kind of leaves it in
limbo.

I would like to have Count 2 dismissed by the
State.

If the State wishes to wait until after the Court
has determined that the plea entered in this cause is
voluntary, that is fine. But at least at the end of
these proceedings I would like to have a dismissal
in those terms.

MR. NIXON: Your Honor, the State is just -- is
agreeing with the dismissal. That is what I said.

We are stipulating that Count 2, in terms of the
underlying facts to support the charge of first degree
murder, has merged into Count 1, and that we are now
only before the Court on Count 1 and Count 3 for pur-
poses of this plea.

THE COURT: Okay. I will accept the State's
position on that.

Mr. Nixon, if you will get me a written order on
that --

MR. NIXON: I will, Your Honor.

THE COURT: -- please.

MR. PEARL: Your Honor, then the defendant is

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before the Court and does hereby move for leave to withdraw his previously entered pleas of not guilty to Counts 1 and 3 of the indictment, and announces that he is ready for rearraignment, and waives the reading of the formal parts of the indictment.

THE COURT: In its entirety?

MR. PEARL: Just the formal parts.

I believe that Mr. Quince should be in fact formally rearraigned upon Counts 1 and 3, and those should be read to him.

THE COURT: Agreed.

State.

MR. NIXON: Thank you, Your Honor.

Do you answer to the name of Kenneth Darcell Quince?

THE DEFENDANT: Yeah.

MR. NIXON: All right.

The State is at this point rearraigning you on the indictment as to Count 1 and Count 3 of the indictment only.

Count 1 of the indictment reads as follows:
Charge, murder in the first degree, in violation of Florida Statute 782.04; specifications of the charge are in that Kenneth Darcell Quince did, on or about the 28th day of December, 1979, in Volusia County, Florida,

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1 then and there unlawfully and from a premeditated
2 design to effect the death of one Frances Bowdoin, a
3 human being, did kill and murder Frances Bowdoin by
4 strangulation.

5 How do you plead to Count 1 of the indictment?

6 THE DEFENDANT: Guilty.

7 MR. NIXON: As to Count 3 of the indictment, the
8 charge specifies burglary of an occupied dwelling, in
9 violation of Florida Statute 810.02; specifications
10 of the charge are in that Kenneth Darcell Quince did,
11 on or about the 28th day of December, 1979, in Volusia
12 County, Florida, did unlawfully commit burglary of a
13 dwelling, the property of Frances Bowdoin, located in
14 the vicinity of 133 White Street, Daytona Beach, in
15 the county and state aforesaid, the same being occupied
16 by Frances Bowdoin, a human being, with the intent to
17 commit an offense therein, to wit: theft, and in the
18 course of committing said offense that said Kenneth
19 Darcell Quince did make an assault upon Frances Bowdoin.

20 How do you plead to Count 3?

21 THE DEFENDANT: Guilty.

22 THE COURT: It is my understanding, Mr. Pearl,
23 and I want to get this straight for the record, that
24 the defendant is tendering to the Court a plea of
25 guilty to Counts 1 and 3; there is only one condition

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1 to this plea, that is that the Court agree with the
2 defense in waiving a jury as to a recommendation as to
3 life or death in these proceedings, that the Court would
4 order a presentence investigation, and that this matter
5 would be set for hearing at a later date, so that the
6 defense could present matters in mitigation to the
7 Court, without a jury being present, and the State
8 could present matters in aggravation to the Court,
9 without a jury being present, and then the Court would
10 make its decision based on the PSI and the matters
11 submitted in aggravation and mitigation. Is that
12 correct?

13 MR. PEARL: That is correct, Your Honor. And in
14 order to give effect to that condition, the defendant
15 does now waive his statutory right to have an advisory
16 or sentencing jury convened, and requests that the
17 matter of sentencing be adjudged by the Court without an
18 advisory jury.

19 MR. NIXON: Your Honor, I also would want, prior
20 to going into the plea dialogue, that the defendant
21 does understand and that the State does announce its
22 intention that at the hearing phase of this case, as
23 to penalty, that the State will be advocating without
24 reservation that the death penalty should be imposed
25 under the circumstances of this case. And I want to

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make sure the defendant understands we'll be making that argument, that there is no condition in regard to any type of recommendation of leniency or any other matter matter regarding the entry of the plea.

MR. PEARL: No such stipulation has been offered or entered into with respect to the sentence.

THE COURT: All right.

Mr. Quince, before I can accept your plea, it is necessary that I explain the effect of your plea of guilty here today to you.

If you have any questions during my explanation, please stop me and ask any questions you have of me, or if you want, you may ask any questions you have of Mr. Pearl.

Now what you are doing today has very serious consequences on your life, and it is important that you understand fully what is going on here today.

Do you understand the plea negotiations today?

THE DEFENDANT: Yeah.

THE COURT: You are pleading guilty to Count 1 and Count 3; you are waiving the right to have a jury give me an advisory recommendation as to what sentence I should impose as to Count 1, life or death; and that matter will be determined by me alone, after having ordered a background investigation, what we call a

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1 PSI, and after having a hearing, at which time your
2 counsel will give reasons why there should be life imprisonment,
3 as opposed to the State, which will present
4 evidence at that hearing calling for the death penalty.
5 Do you understand that?

6 THE DEFENDANT: (Nods head)

7 THE COURT: Now do you understand that the State
8 is going to seek the death penalty in this case?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay.

11 Mr. Quince, when you plead guilty in the State of
12 Florida, you are admitting the truth of the charge. Do
13 you understand that?

14 THE DEFENDANT: Yeah.

15 THE COURT: Okay.

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Now that's opposed to pleading not
18 guilty. If you plead not guilty, before you could be
19 convicted the State would have the burden of proving
20 your guilt beyond and to the exclusion of every reasonable
21 doubt. Do you understand that?

22 THE DEFENDANT: Yeah. I know.

23 THE COURT: When you enter a plea of guilty in the
24 State of Florida, one of the things that a plea of
25 guilty does, it severely limits your right to appeal the

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1 judgment and sentence of this Court. If you wanted to
2 appeal my judgment and sentence after you have entered
3 a plea of guilty, you would have a very difficult time
4 doing so. So a plea of guilty narrows your right to
5 appeal. Do you understand that?

6 THE DEFENDANT: Yeah, I understand.

7 THE COURT: I'm going to place you under oath and
8 ask you some questions. You must answer my questions
9 fully and truthfully.

10 Mr. Clerk.

11 (Whereupon the defendant was duly sworn by the
12 clerk.)

13 THE COURT: How old are you?

14 THE DEFENDANT: Twenty-one.

15 THE COURT: And before you were in jail, where did
16 you live?

17 THE DEFENDANT: 321 White Street.

18 THE COURT: How long have you lived in Daytona
19 Beach?

20 THE DEFENDANT: All my life.

21 THE COURT: Where did you go to school?

22 THE DEFENDANT: Mainland.

23 THE COURT: How much schooling did you have?

24 THE DEFENDANT: I stopped in the eleventh grade.

25 THE COURT: Eleventh grade. Did you go to

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1 Mainland High School?

2 THE DEFENDANT: Yeah.

3 THE COURT: All right.

4 Do you read, write, speak and understand the
5 English language without difficulty?

6 THE DEFENDANT: Yeah.

7 THE COURT: What type of work have you done, what
8 type of jobs or occupation?

9 THE DEFENDANT: I was a landscaper and a heavy
10 equipment operator.

11 THE COURT: Do you now or at any time in your past
12 have you suffered from any mental or emotional
13 disabilities?

14 THE DEFENDANT: No.

15 THE COURT: Are you sober and competent now?

16 THE DEFENDANT: Yeah.

17 THE COURT: You are not under the influence of
18 any drug or alcoholic beverage?

19 THE DEFENDANT: No.

20 THE COURT: By your plea of guilty you are giving
21 up certain other rights: Your right to remain silent,
22 that is, your right against self-incrimination. Also,
23 you are giving up your very important right to a jury
24 trial as to your guilt or innocence; at that trial
25 the right to be represented by counsel; the right to

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1 confront those who testify against you, and the right
2 to compel the attendance of those who testify in your
3 behalf. There will be no further trial of any kind.
4 Do you understand that?

5 THE DEFENDANT: Yeah.

6 THE COURT: Although there will be a hearing in
7 aggravation and mitigation at a later date. Do you
8 understand that?

9 THE DEFENDANT: Yeah..

10 THE COURT: Also, by your plea you are giving up
11 your right to complain on appeal about any prior ruling
12 the Court has made in your case. Do you understand
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: State, may we please have a brief
16 factual recitation as to Counts 1 and 3?

17 MR. NIXON: Yes, Your Honor.

18 First, as to Count 1 of the Information, murder
19 in the first degree, in violation of Florida Statute
20 782.04, the State would have been able to prove through
21 the testimony of Larry Lewis and through the testimony
22 of experts from the Sanford Crime Lab, as well as the
23 Medical Examiner's Office here, and the Federal Bureau
24 of Investigation, that Mr. Quince entered the residence
25 of Frances Bowdoin, an eighty-two year old woman, at the

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1 time of the offense she resided in a residence at 133
2 White Street, that she was in the residence alone.

3 Mr. Quince entered that residence through the
4 back entryway, forcing an entry point through a window,
5 into the kitchen area of her residence.

6 That he at that time or during the process of the
7 entry onto the residence assaulted Frances Bowdoin; and
8 during the process of that assault, more particularly
9 a sexual assault, there being evidence of sexual
10 battery being committed on Ms. Bowdoin, that during
11 that -- the process of that assault that he strangled
12 her to death, leaving her lying in her room.

13 That in addition, that during the course of the
14 circumstances surrounding the first degree murder, that
15 the evidence would show that he additionally removed
16 from the residence -- this now going to facts and
17 circumstances as to Count 3 of the indictment -- that
18 he removed articles of personal property belonging to
19 the deceased, Ms. Bowdoin; that that property was later
20 identified as having been pawned the following day by
21 the defendant.

22 In addition to that, when the police confronted
23 Mr. Quince with the facts and circumstances of the
24 investigation, that he made a written confession as to
25 the homicide involving the murder, that of strangling

Frances Bowdoin; that in addition to that he made oral statements to Detective Lewis of the Daytona Beach Police Department admitting the burglary as well as the sexual battery that has been alleged as being the underlying felony of the murder charge.

That the circumstances, obviously, of the entry were done without the consent of Ms. Bowdoin; and that all the circumstantial evidence as indicated did prove the aspect of the sexual battery as well as the taking of property of a value of one dollar or more without the consent of the victim in this cause.

That additionally, investigation would show that during the process of the burglary that Ms. Bowdoin was alive and also was struck; physical evidence will indicate more than one type of injury, besides the strangulation of Ms. Bowdoin, during the process of the commission of the assault.

That these all occurred on or about the 28th of December, 1979; all occurred within Volusia County, Florida.

THE COURT: Sir, do you admit the truth of the charges by the State of Florida against you?

THE DEFENDANT: Yes.

THE COURT: Has anybody promised you a light sentence or that you would otherwise be rewarded if you

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1 plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: Do you understand there is no deal as
4 to the sentence in this case?

5 THE DEFENDANT: Yeah. I understand.

6 THE COURT: Has anybody threatened you or pres-
7 sured you to make you plead?

8 THE DEFENDANT: No.

9 THE COURT: You are represented by Mr. Pearl, who
10 stands to your side.

11 Have you told him everything you know about your
12 case?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you satisfied with his services
15 as an attorney?

16 THE DEFENDANT: Yeah, I'm satisfied.

17 THE COURT: Okay.

18 Mr. Pearl, does the defendant fully understand
19 the effects of the plea negotiations?

20 MR. PEARL: Your Honor, based upon the conferences
21 I have had with Mr. Quince, I have the impression and
22 am convinced to a moral certainty that he understands
23 the nature of the plea and the possible consequences of
24 the plea which he has entered today.

25 THE COURT: Mr. Quince, there is one other thing

I want to clarify with you.

As to Count 1, which is murder in the first degree, you could receive death by electrocution, or you could receive life and sentence without parole until at least twenty-five years have passed.

Additionally, there is potentially another sentence as to Count 3, potentially. And you could receive life imprisonment for that, also; and that could be placed on top of any sentence imposed as to Count 1. They could be run consecutively.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

MR. PEARL: Your Honor, it is true, however, is it not, that at the Court's discretion that that sentence upon Count 3 could either be imposed consecutively or concurrently, as the Court may then see fit?

THE COURT: That is true. I just wanted to take it at its worst --

MR. PEARL: Yes, sir.

THE COURT: -- and explain that to him.

Do you have any questions about that?

THE DEFENDANT: No.

THE COURT: Do you have any questions about anything we have discussed here this morning?

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1 THE DEFENDANT: No.

2 THE COURT: All right.

3 Sir, the Court finds you alert and intelligent,
4 you understand the nature of the charges against you,
5 and appreciate the consequences of pleading guilty; the
6 facts which the State is prepared to prove, and which
7 by your plea you admit, are sufficient to sustain the
8 plea.

9 The Court further finds your decision to plead
10 guilty is freely, voluntarily and intelligently made,
11 you have had the advice and counsel of a competent
12 attorney, with whom you say you are satisfied.

13 The plea of guilty is accepted. I am asking that
14 the Department of Corrections do a PSI within thirty
15 days from this date.

16 Counsel, I would like you to get hearing time after
17 thirty days from this date. Decide among yourselves
18 how much time you are going to need; get the hearing
19 time from my secretary today. I don't think that this
20 matter should linger.

21 MR. PEARL: Yes, Your Honor.

22 THE COURT: Thank you, gentlemen.

23 (Whereupon the clerk and the Court held a confer-
24 ence.)

25 THE COURT: How about Count 2? Does that stand

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1 dismissed at this time?

2 MR. NIXON: Your Honor, it stands merged.

3 THE COURT: If you would give me an order to that
4 effect.

5 MR. PEARL: Your Honor, the term "merged" does
6 nothing but mystify me. As I understand it --

7 MR. NIXON: Your Honor, I would then use the term
8 it's been abandoned.

9 MR. PEARL: Can we use the term "dismissed"? I
10 mean --

11 MR. NIXON: -- the Court on stipulation can make
12 that finding.

13 The concern I have, Your Honor, is to make cer-
14 tain that the record under no circumstances would
15 allow me not to argue the facts and circumstances as to
16 what is contained in that count, and that there is
17 no question that the State hasn't abandoned in terms
18 of aggravation the circumstances surrounding the death,
19 or that that in fact is the basis of the underlying
20 felony.

21 MR. PEARL: It is the underlying felony, and the
22 State is not estopped or barred in any way from
23 presenting the facts concerning the underlying felony.

24 But I think in the interest of my client --

25 THE COURT: As far as jeopardy or penalty, or

1 anything else like that, it stands dismissed.

2 MR. NIXON: Your Honor, you have requested the
3 State prepare an order. Part of that order would be the
4 State's acknowledgement that that count is dismissed
5 and that no liability is --

6 THE COURT: It does not preclude factual presenta-
7 tion by the State.

8 MR. PEARL: The Pinder case clearly says that the
9 defendant may not be either convicted or punished for
10 the underlying felony. And that is why I think that
11 dismissal is compelled.

12 THE COURT: To that extent, I agree with you.

13 MR. PEARL: Thank you.

14 (Whereupon Mr. Nixon and Mr. Pearl held an off-
15 the-record discussion.)

16 WHEREUPON the proceedings were concluded.
17
18
19
20
21
22
23
24
25

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STATE OF FLORIDA)
)
COUNTY OF VOLUSIA)

I, Robin F. Suomi, do HEREBY CERTIFY that the foregoing 19 pages constitute a true and complete transcript of the proceedings taken and reported by me in the aforementioned cause at the time and place herein set forth, same having been before the Honorable S. James Foxman, Circuit Judge, said cause being Case 80-48-CC: State of Florida versus Kenneth Darcell Quince, Defendant.

WITNESS my hand and official seal in the city of Daytona Beach, county of Volusia, state of Florida this 7th day of April, A.D., 1981.

Philip J. Chanfrau
Deputy Official Court Reporter
Seventh Judicial Circuit of Florida
Notary Public, State of Florida at Large

My commission expires 4/24/83

PHILIP J. CHANFRAU & ASSOCIATES
COURT REPORTERS

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DAYTONA BEACH, FLORIDA

No. _____

In the Supreme Court of the United States

KENNETH DARCELL QUINCE A/K/A RASIKH ABDUL-HAKIM,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

DEATH PENALTY CASE

Appendix D.

FILED

IN THE SUPREME COURT OF FLORIDA

MAY 1 1981

W. J. WHITE
CLERK SUPREME COURT
By 
Chief Deputy Clerk

KENNETH DARCELL QUINCE,

Defendant/Appellant

APPEAL DOCKET NO: 59,954

vs.

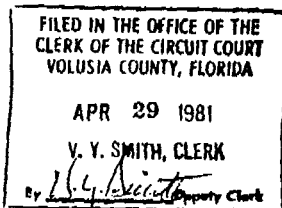
CASE NO. 80-48-CC

THE STATE OF FLORIDA,

Plaintiff/Appellee

SUPPLEMENT TO
TRANSCRIPT OF RECORD ON APPEAL

ONE VOLUME



Appealed from the Circuit Court, Volusia County, Florida

Honorable S. James Foxman, Judge

Honorable James Smith
Attorney General
125 N. Ridgewood Ave., 4th fl.
Daytona Beach, Fla. 32014

For Plaintiff/Appellee

Honorable James B. Gibson
Public Defender
136 1/2 So. Beach Street
Daytona Beach, Fla. 32014

For Defendant/Appellant



1 IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT
2 OF FLORIDA, IN AND FOR VOLUSIA COUNTY
3 CASE NUMBER 80-48-CC

4 STATE OF FLORIDA)
5)
6 vs.)
7)
8 KENNETH DARCELL QUINCE,)
9)
10 Defendant.)

FILED IN THE OFFICE OF THE
CLERK OF THE CIRCUIT COURT
VOLUSIA COUNTY, FLORIDA

APR 28 1981

V. Y. SMITH, CLERK

By _____ Deputy Clerk

9 Volusia County Courthouse
10 DeLand, Florida
11 August 11, 1980
12 9:00 A.M.

13 TRANSCRIPT OF PROCEEDINGS

14 The above-styled cause came on to be heard before the
15 Honorable S. James Foxman, Circuit Judge, at the time
16 and place above indicated.

17 PRESENT: LAWRENCE NIXON, Esquire
18 Assistant State Attorney
19 on behalf of the State of Florida

20 HOWARD B. PEARL, Esquire
21 Assistant Public Defender
22 on behalf of defendant

23 KENNETH DARCELL QUINCE
24 Defendant

25 ROBIN F. SUOMI
Deputy Official Court Reporter
Seventh Judicial Circuit of Florida

Others as may appear in the transcript

WHEREUPON the following proceedings were had:

1 to the Court the case of State of Florida versus
2 Pinder, P-i-n-d-e-r, 375 Southern Reporter 2d, 836,
3 a decision of the Supreme Court of Florida of 1979,
4 which I submit to the Court is controlling, and in
5 fact almost identical to the situation we have in this
6 case today.

7 THE COURT: State.

8 MR. NIXON: Your Honor, the State would concede
9 the merits of the motion insofar as that the motion is
10 really a request of the State to elect to merge one of
11 the underlying felony counts contained in the indict-
12 ment into the murder count as charged.

13 The State is electing to merge Count 2 with Count 1
14 as far as the factual basis, and that the matter is
15 now before the Court upon stipulation by the State, in
16 view of the defendant's motion under the authority of
17 State v. Pinder, that the murder in the first degree,
18 that the underlying facts of that will be a murder
19 felony involving the commission of sexual battery, and
20 that the plea that is to be entered in this case,
21 based on prior representation before the Court, will be
22 as to Count 1 and Count 3 only.

23 THE COURT: So in other words, Count 2 is dis-
24 missed?

25 MR. NIXON: Insofar, Your Honor, as it's dismissed

1 THE COURT: The next matter to come before the
2 Court is the case of the State of Florida versus
3 Kenneth Darcell Quince.

4 This is Case Number 80-48-CC.

5 Kenneth Darcell Quince.

6 Let the record reflect that Kenneth Darcell Quince
7 is here before the Court. He is represented by Mr.
8 Pearl, of our Public Defender's office. Mr. Nixon
9 represents the State.

10 Mr. Pearl, I understand there is a motion before
11 the Court at this time that was filed this morning, a
12 motion to dismiss.

13 MR. PEARL: Yes, Your Honor. It is captioned
14 motion to dismiss, but it is in essence a motion to
15 compel the State to elect whether to dismiss Count 2,
16 charging sexual battery , or Count 3, charging burglary,
17 as one of those two counts as the underlying felony to
18 Count 1, which is a charge of murder in the first
19 degree.

20 And although the charge is that Mr. Quince effected
21 the death of the victim by a premeditated design, it is
22 in fact a charge of felony murder, which was committed
23 either during the burglary or during the sexual
24 battery.

25 As authority for my motion, I would like to cite

1 in terms of the formality of the indictment, yes, sir,
2 it is.

3 MR. PEARL: Your Honor, that kind of leaves it in
4 limbo.

5 I would like to have Count 2 dismissed by the
6 State.

7 If the State wishes to wait until after the Court
8 has determined that the plea entered in this cause is
9 voluntary, that is fine. But at least at the end of
10 these proceedings I would like to have a dismissal
11 in those terms.

12 MR. NIXON: Your Honor, the State is just -- is
13 agreeing with the dismissal. That is what I said.

14 We are stipulating that Count 2, in terms of the
15 underlying facts to support the charge of first degree
16 murder, has merged into Count 1, and that we are now
17 only before the Court on Count 1 and Count 3 for pur-
18 poses of this plea.

19 THE COURT: Okay. I will accept the State's
20 position on that.

21 Mr. Nixon, if you will get me a written order on
22 that --

23 MR. NIXON: I will, Your Honor.

24 THE COURT: -- please.

25 MR. PEARL: Your Honor, then the defendant is

1 before the Court and does hereby move for leave to
2 withdraw his previously entered pleas of not guilty
3 to Counts 1 and 3 of the indictment, and announces that
4 he is ready for rearraignment, and waives the reading
5 of the formal parts of the indictment.

6 THE COURT: In its entirety?

7 MR. PEARL: Just the formal parts.

8 I believe that Mr. Quince should be in fact
9 formally rearraigned upon Counts 1 and 3, and those
10 should be read to him.

11 THE COURT: Agreed.

12 State.

13 MR. NIXON: Thank you, Your Honor.

14 Do you answer to the name of Kenneth Darcell
15 Quince?

16 THE DEFENDANT: Yeah.

17 MR. NIXON: All right.

18 The State is at this point rearraigning you on
19 the indictment as to Count 1 and Count 3 of the indict-
20 ment only.

21 Count 1 of the indictment reads as follows:
22 Charge, murder in the first degree, in violation of
23 Florida Statute 782.04; specifications of the charge
24 are in that Kenneth Darcell Quince did, on or about the
25 28th day of December, 1979, in Volusia County, Florida,

1 then and there unlawfully and from a premeditated
2 design to effect the death of one Frances Bowdoin, a
3 human being, did kill and murder Frances Bowdoin by
4 strangulation.

5 How do you plead to Count 1 of the indictment?

6 THE DEFENDANT: Guilty.

7 MR. NIXON: As to Count 3 of the indictment, the
8 charge specifies burglary of an occupied dwelling, in
9 violation of Florida Statute 810.02; specifications
10 of the charge are in that Kenneth Darcell Quince did,
11 on or about the 28th day of December, 1979, in Volusia
12 County, Florida, did unlawfully commit burglary of a
13 dwelling, the property of Frances Bowdoin, located in
14 the vicinity of 133 White Street, Daytona Beach, in
15 the county and state aforesaid, the same being occupied
16 by Frances Bowdoin, a human being, with the intent to
17 commit an offense therein, to wit: theft, and in the
18 course of committing said offense that said Kenneth
19 Darcell Quince did make an assault upon Frances Bowdoin.

20 How do you plead to Count 3?

21 THE DEFENDANT: Guilty.

22 THE COURT: It is my understanding, Mr. Pearl,
23 and I want to get this straight for the record, that
24 the defendant is tendering to the Court a plea of
25 guilty to Counts 1 and 3; there is only one condition

1 to this plea, that is that the Court agree with the
2 defense in waiving a jury as to a recommendation as to
3 life or death in these proceedings, that the Court would
4 order a presentence investigation, and that this matter
5 would be set for hearing at a later date, so that the
6 defense could present matters in mitigation to the
7 Court, without a jury being present, and the State
8 could present matters in aggravation to the Court,
9 without a jury being present, and then the Court would
10 make its decision based on the PSI and the matters
11 submitted in aggravation and mitigation. Is that
12 correct?

13 MR. PEARL: That is correct, Your Honor. And in
14 order to give effect to that condition, the defendant
15 does now waive his statutory right to have an advisory
16 or sentencing jury convened, and requests that the
17 matter of sentencing be adjudged by the Court without an
18 advisory jury.

19 MR. NIXON: Your Honor, I also would want, prior
20 to going into the plea dialogue, that the defendant
21 does understand and that the State does announce its
22 intention that at the hearing phase of this case, as
23 to penalty, that the State will be advocating without
24 reservation that the death penalty should be imposed
25 under the circumstances of this case. And I want to

1 make sure the defendant understands we'll be making that
2 argument, that there is no condition in regard to any
3 type of recommendation of leniency or any other matter
4 matter regarding the entry of the plea.

5 MR. PEARL: No such stipulation has been offered
6 or entered into with respect to the sentence.

7 THE COURT: All right.

8 Mr. Quince, before I can accept your plea, it is
9 necessary that I explain the effect of your plea of
10 guilty here today to you.

11 If you have any questions during my explanation,
12 please stop me and ask any questions you have of me,
13 or if you want, you may ask any questions you have of
14 Mr. Pearl.

15 Now what you are doing today has very serious
16 consequences on your life, and it is important that you
17 understand fully what is going on here today.

18 Do you understand the plea negotiations today?

19 THE DEFENDANT: Yeah.

20 THE COURT: You are pleading guilty to Count 1
21 and Count 3; you are waiving the right to have a jury
22 give me an advisory recommendation as to what sentence
23 I should impose as to Count 1, life or death; and that
24 matter will be determined by me alone, after having
25 ordered a background investigation, what we call a

1 PSI, and after having a hearing, at which time your
2 counsel will give reasons why there should be life imprisonment,
3 as opposed to the State, which will present
4 evidence at that hearing calling for the death penalty.
5 Do you understand that?

6 THE DEFENDANT: (Nods head)

7 THE COURT: Now do you understand that the State
8 is going to seek the death penalty in this case?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay.

11 Mr. Quince, when you plead guilty in the State of
12 Florida, you are admitting the truth of the charge. Do
13 you understand that?

14 THE DEFENDANT: Yeah.

15 THE COURT: Okay.

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Now that's opposed to pleading not
18 guilty. If you plead not guilty, before you could be
19 convicted the State would have the burden of proving
20 your guilt beyond and to the exclusion of every reasonable
21 doubt. Do you understand that?

22 THE DEFENDANT: Yeah. I know.

23 THE COURT: When you enter a plea of guilty in the
24 State of Florida, one of the things that a plea of
25 guilty does, it severely limits your right to appeal the

1 judgment and sentence of this Court. If you wanted to
2 appeal my judgment and sentence after you have entered
3 a plea of guilty, you would have a very difficult time
4 doing so. So a plea of guilty narrows your right to
5 appeal. Do you understand that?

6 THE DEFENDANT: Yeah, I understand.

7 THE COURT: I'm going to place you under oath and
8 ask you some questions. You must answer my questions
9 fully and truthfully.

10 Mr. Clerk.

11 (Whereupon the defendant was duly sworn by the
12 clerk.)

13 THE COURT: How old are you?

14 THE DEFENDANT: Twenty-one.

15 THE COURT: And before you were in jail, where did
16 you live?

17 THE DEFENDANT: 321 White Street.

18 THE COURT: How long have you lived in Daytona
19 Beach?

20 THE DEFENDANT: All my life.

21 THE COURT: Where did you go to school?

22 THE DEFENDANT: Mainland.

23 THE COURT: How much schooling did you have?

24 THE DEFENDANT: I stopped in the eleventh grade.

25 THE COURT: Eleventh grade. Did you go to

1 Mainland High School?

2 THE DEFENDANT: Yeah.

3 THE COURT: All right.

4 Do you read, write, speak and understand the
5 English language without difficulty?

6 THE DEFENDANT: Yeah.

7 THE COURT: What type of work have you done, what
8 type of jobs or occupation?

9 THE DEFENDANT: I was a landscaper and a heavy
10 equipment operator.

11 THE COURT: Do you now or at any time in your past
12 have you suffered from any mental or emotional
13 disabilities?

14 THE DEFENDANT: No.

15 THE COURT: Are you sober and competent now?

16 THE DEFENDANT: Yeah.

17 THE COURT: You are not under the influence of
18 any drug or alcoholic beverage?

19 THE DEFENDANT: No.

20 THE COURT: By your plea of guilty you are giving
21 up certain other rights: Your right to remain silent,
22 that is, your right against self-incrimination. Also,
23 you are giving up your very important right to a jury
24 trial as to your guilt or innocence; at that trial
25 the right to be represented by counsel; the right to

1 confront those who testify against you; and the right
2 to compel the attendance of those who testify in your
3 behalf. There will be no further trial of any kind.
4 Do you understand that?

5 THE DEFENDANT: Yeah.

6 THE COURT: Although there will be a hearing in
7 aggravation and mitigation at a later date. Do you
8 understand that?

9 THE DEFENDANT: Yeah.

10 THE COURT: Also, by your plea you are giving up
11 your right to complain on appeal about any prior ruling
12 the Court has made in your case. Do you understand
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: State, may we please have a brief
16 factual recitation as to Counts 1 and 3?

17 MR. NIXON: Yes, Your Honor.

18 First, as to Count 1 of the Information, murder
19 in the first degree, in violation of Florida Statute
20 782.04, the State would have been able to prove through
21 the testimony of Larry Lewis and through the testimony
22 of experts from the Sanford Crime Lab, as well as the
23 Medical Examiner's Office here, and the Federal Bureau
24 of Investigation, that Mr. Quince entered the residence
25 of Frances Bowdoin, an eighty-two year old woman, at the

1 time of the offense she resided in a residence at 133
2 White Street, that she was in the residence alone.

3 Mr. Quince entered that residence through the
4 back entryway, forcing an entry point through a window,
5 into the kitchen area of her residence.

6 That he at that time or during the process of the
7 entry onto the residence assaulted Frances Bowdoin; and
8 during the process of that assault, more particularly
9 a sexual assault, there being evidence of sexual
10 battery being committed on Ms. Bowdoin, that during
11 that -- the process of that assault that he strangled
12 her to death, leaving her lying in her room.

13 That in addition, that during the course of the
14 circumstances surrounding the first degree murder, that
15 the evidence would show that he additionally removed
16 from the residence -- this now going to facts and
17 circumstances as to Count 3 of the indictment -- that
18 he removed articles of personal property belonging to
19 the deceased, Ms. Bowdoin; that that property was later
20 identified as having been pawned the following day by
21 the defendant.

22 In addition to that, when the police confronted
23 Mr. Quince with the facts and circumstances of the
24 investigation, that he made a written confession as to
25 the homicide involving the murder, that of strangling

1 Frances Bowdoin; that in addition to that he made oral
2 statements to Detective Lewis of the Daytona Beach
3 Police Department admitting the burglary as well as the
4 sexual battery that has been alleged as being the under-
5 lying felony of the murder charge.

6 That the circumstances, obviously, of the entry
7 were done without the consent of Ms. Bowdoin; and that
8 all the circumstantial evidence as indicated did prove
9 the aspect of the sexual battery as well as the taking
10 of property of a value of one dollar or more without
11 the consent of the victim in this cause.

12 That additionally, investigation would show that
13 during the process of the burglary that Ms. Bowdoin
14 was alive and also was struck; physical evidence will
15 indicate more than one type of injury, besides the
16 strangulation of Ms. Bowdoin, during the process of the
17 commission of the assault.

18 That these all occurred on or about the 28th of
19 December, 1979; all occurred within Volusia County,
20 Florida.

21 THE COURT: Sir, do you admit the truth of the
22 charges by the State of Florida against you?

23 THE DEFENDANT: Yes.

24 THE COURT: Has anybody promised you a light
25 sentence or that you would otherwise be rewarded if you

1 plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: Do you understand there is no deal as
4 to the sentence in this case?

5 THE DEFENDANT: Yeah. I understand.

6 THE COURT: Has anybody threatened you or pres-
7 sured you to make you plead?

8 THE DEFENDANT: No.

9 THE COURT: You are represented by Mr. Pearl, who
10 stands to your side.

11 Have you told him everything you know about your
12 case?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you satisfied with his services
15 as an attorney?

16 THE DEFENDANT: Yeah, I'm satisfied.

17 THE COURT: Okay.

18 Mr. Pearl, does the defendant fully understand
19 the effects of the plea negotiations?

20 MR. PEARL: Your Honor, based upon the conferences
21 I have had with Mr. Quince, I have the impression and
22 am convinced to a moral certainty that he understands
23 the nature of the plea and the possible consequences of
24 the plea which he has entered today.

25 THE COURT: Mr. Quince, there is one other thing

1 I want to clarify with you.

2 As to Count 1, which is murder in the first
3 degree, you could receive death by electrocution, or
4 you could receive life and sentence without parole
5 until at least twenty-five years have passed.

6 Additionally, there is potentially another sentence
7 as to Count 3, potentially. And you could receive
8 life imprisonment for that, also; and that could be
9 placed on top of any sentence imposed as to Count 1.
10 They could be run consecutively.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay.

14 MR. PEARL: Your Honor, it is true, however, is it
15 not, that at the Court's discretion that that sentence
16 upon Count 3 could either be imposed consecutively or
17 concurrently, as the Court may then see fit?

18 THE COURT: That is true. I just wanted to take
19 it at its worst --

20 MR. PEARL: Yes, sir.

21 THE COURT: -- and explain that to him.

22 Do you have any questions about that?

23 THE DEFENDANT: No.

24 THE COURT: Do you have any questions about any-
25 thing we have discussed here this morning?

1 THE DEFENDANT: No.

2 THE COURT: All right.

3 Sir, the Court finds you alert and intelligent,
4 you understand the nature of the charges against you,
5 and appreciate the consequences of pleading guilty; the
6 facts which the State is prepared to prove, and which
7 by your plea you admit, are sufficient to sustain the
8 plea.

9 The Court further finds your decision to plead
10 guilty is freely, voluntarily and intelligently made,
11 you have had the advice and counsel of a competent
12 attorney, with whom you say you are satisfied.

13 The plea of guilty is accepted. I am asking that
14 the Department of Corrections do a PSI within thirty
15 days from this date.

16 Counsel, I would like you to get hearing time after
17 thirty days from this date. Decide among yourselves
18 how much time you are going to need; get the hearing
19 time from my secretary today. I don't think that this
20 matter should linger.

21 MR. PEARL: Yes, Your Honor.

22 THE COURT: Thank you, gentlemen.

23 (Whereupon the clerk and the Court held a confer-
24 ence.)

25 THE COURT: How about Count 2? Does that stand

1 dismissed at this time?

2 MR. NIXON: Your Honor, it stands merged.

3 THE COURT: If you would give me an order to that
4 effect.

5 MR. PEARL: Your Honor, the term "merged" does
6 nothing but mystify me. As I understand it --

7 MR. NIXON: Your Honor, I would then use the term
8 it's been abandoned.

9 MR. PEARL: Can we use the term "dismissed"? I
10 mean --

11 MR. NIXON: -- the Court on stipulation can make
12 that finding.

13 The concern I have, Your Honor, is to make cer-
14 tain that the record under no circumstances would
15 allow me not to argue the facts and circumstances as to
16 what is contained in that count, and that there is
17 no question that the State hasn't abandoned in terms
18 of aggravation the circumstances surrounding the death,
19 or that that in fact is the basis of the underlying
20 felony.

21 MR. PEARL: It is the underlying felony, and the
22 State is not estopped or barred in any way from
23 presenting the facts concerning the underlying felony.

24 But I think in the interest of my client --

25 THE COURT: As far as jeopardy or penalty, or

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anything else like that, it stands dismissed.

MR. NIXON: Your Honor, you have requested the State prepare an order. Part of that order would be the State's acknowledgement that that count is dismissed and that no liability is --

THE COURT: It does not preclude factual presentation by the State.

MR. PEARL: The Pinder case clearly says that the defendant may not be either convicted or punished for the underlying felony. And that is why I think that dismissal is compelled.

THE COURT: To that extent, I agree with you.

MR. PEARL: Thank you.

(Whereupon Mr. Nixon and Mr. Pearl held an off-the-record discussion.)

WHEREUPON the proceedings were concluded.

1 STATE OF FLORIDA)
2)
3 COUNTY OF VOLUSIA)

4 I, Robin F. Suomi, do HEREBY CERTIFY that the
5 foregoing 19 pages constitute a true and complete transcript
6 of the proceedings taken and reported by me in the afore-
7 mentioned cause at the time and place herein set forth,
8 same having been before the Honorable S. James Foxman,
9 Circuit Judge, said cause being Case 80-48-CC: State of
10 Florida versus Kenneth Darcell Quince, Defendant.

11 WITNESS my hand and official seal in the city of
12 Daytona Beach, county of Volusia, state of Florida this
13 26th day of April, A.D., 1981.

14
15 
16 Deputy Official Court Reporter
17 Seventh Judicial Circuit of Florida
18 Notary Public, State of Florida at Large

19 My commission expires 4/24/83
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No. _____

In the Supreme Court of the United States

KENNETH DARCELL QUINCE A/K/A RASIKH ABDUL-HAKIM,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

DEATH PENALTY CASE

Appendix E.

CHAPTER 921

SENTENCE

- 921.09 Fees of physicians who determine sanity at time of sentence.
- 921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.
- 921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.
- 921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.
- 921.15 Stay of execution of sentence to fine; bond and proceedings.
- 921.16 When sentences to be concurrent and when consecutive.
- 921.161 Sentence not to run until imposed; credit for county jail time after sentence; certificate of sheriff.
- 921.18 Sentence for indeterminate period for non-capital felony.
- 921.185 Sentence; restitution a mitigation in certain crimes.
- 921.20 Classification summary; Parole and Probation Commission.
- 921.21 Progress reports to Parole and Probation Commission.
- 921.22 Determination of exact period of imprisonment by Parole and Probation Commission.
- 921.231 Presentence investigation reports.
- 921.241 Felony judgments; fingerprints required in record.

921.09 Fees of physicians who determine sanity at time of sentence.—The court shall allow reasonable fees to physicians appointed by the court to determine the mental condition of a defendant who has alleged insanity as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

History.—s. 255, ch. 19554, 1939; CGL 1940 Supp. 8663(264); s. 121, ch. 70-339.

921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.—The court shall allow reasonable fees to the physicians appointed to examine a defendant who has alleged her pregnancy as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

History.—s. 258, ch. 19554, 1939; CGL 1940 Supp. 8663(267); s. 122, ch. 70-339.

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(1) **SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.**—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sen-

tenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) **ADVISORY SENTENCE BY THE JURY.**—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) **FINDINGS IN SUPPORT OF SENTENCE OF DEATH.**—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose

sentence of life imprisonment in accordance with s. 775.082.

(4) **REVIEW OF JUDGMENT AND SENTENCE.**—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within 60 days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed 30 days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court.

(5) **AGGRAVATING CIRCUMSTANCES.**—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(6) **MITIGATING CIRCUMSTANCES.**—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

History.—s. 237a, ch. 19554, 1939; CGL 1940 Supp. 8663(246); s. 119, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 79-353.

Note.—Former s. 919.23.

921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.—

(1) At the sentencing hearing, and prior to the imposition of sentence upon any defendant who has pleaded guilty or nolo contendere to any crime, the sentencing court shall permit the victim of the crime for which the defendant is being sentenced to:

(a) Appear before the sentencing court for the purpose of making a statement under oath for the record; or

(b) Submit a written statement under oath to the office of the state attorney, which shall be filed with the sentencing court.

(2) The state attorney or any assistant state attorney shall advise all victims that statements, whether oral or written, shall relate solely to the facts of the case and the extent of any injuries, financial losses, and loss of earnings directly resulting from the crime for which the defendant is being sentenced.

(3) The court may refuse to accept a negotiated plea and order the defendant to stand trial.

History.—ss. 9, 10, ch. 76-274.

921.15 Stay of execution of sentence to fine; bond and proceedings.—

(1) When a defendant is sentenced to pay a fine, he shall have the right to give bail for payment of the fine and the costs of prosecution. The bond shall be executed by the defendant and two sureties approved by the sheriff or the officer charged with execution of the judgment.

(2) The bond shall be made payable in 90 days to the governor and his successors in office.

(3) If the bond is not paid at the expiration of 90 days, the sheriff or the officer charged with execution of the judgment shall indorse the default on the bond and file it with the clerk of the court in which the judgment was rendered. The clerk shall issue an execution as if there had been a judgment at law on the bond, and the same proceedings shall be followed as in other executions. After default of the bond, the convicted person may be proceeded against as if bond had not been given.

History.—s. 260a, ch. 19554, 1939; CGL 8426, 8427; CGL 1940 Supp. 8663(270); s. 123, ch. 70-339.

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently.

(2) A county court or circuit court of this state may direct that the sentence imposed by such court be served concurrently with a sentence imposed by a court of another state or of the United States. In