IN THE SUPREME COURT OF FLORIDA

ANTON J. KRAWCZUK,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

Case No. 79,491

APPEAL FROM THE CIRCUIT COURT
IN AND FOR LEE COUNTY
STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR APPELLANT

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PRELIMINARY STATEMENT

The Appellant relies on all arguments, authorities, and reasons set forth in his Initial Brief on Appeal. In addition, as to issues I A. and IV., the Appellant presents the following authorities and argument in reply to the State's brief filed in this cause.

ARGUMENT

ISSUE I A.

REVIEW OF THE MOTION TO SUPPRESS CONFESSION IS NOT PRECLUDED BY ENTRY OF A GUILTY PLEA.

In further support of the proposition that it is necessary and proper for this court to review Appellant's motion to suppress confession, reliance is placed on Muehleman v. State, 503 So. 2d 310, 312-313 (Fla. 1987), where this Court held -- in the context of a guilty plea entered after denial of motions to suppress confessions -- that section 921.141(4) mandates automatic review of the judgment of conviction and sentence of death. Additionally, in Hatcher v. State, 379 S.E. 2d 775, 778 (Ga. 1989), the Court held that the use of an inadmissible statement used by the State in the sentencing phase after a plea of guilty to murder, was not harmless error and required reversal of the penalty of death.

ISSUE IV

THE TRIAL COURT ERRED IN FAILING TO PROPERLY CONSIDER AND FIND NON-STATUTORY MITIGATING FACTORS.

621/1368

In Farr v. State, 18 Fla. L. Weekly S380 (June 4, 1993), this Court emphasized the requirement placed on the trial court of considering any evidence of mitigation in the record, including psychiatric evaluations and presentence investigations.

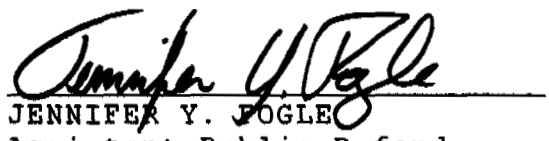
> Our law is plain that such a requirement in fact exists. We repeatedly have stated that mitigating evidence must be considered and weighed when contained anywhere in the record, to the extent it is believable and uncontroverted. E.g., Santos v. State, 591 So. 2d 160 (Fla. 1991); Campbell v. State, 571 So. 2d 415 (Fla. 1990); Rogers v. State, 511 So. 2d 526 (Fla. 1987), cert. denied, 484 U.S. 1020, 108 S. Ct. 733, 98 L. Ed. 2d 681 (1988). That requirement applies with no less force when a defendant argues in favor of the death penalty, and even if the defendant asks the court not to consider mitigating evidence.

All available mitigating evidence should be specifically factored and weighed. A mere summary or conclusory statement, such as occurred in the instant case, is insufficient. The error by the trial court cannot be deemed harmless, and the sentence of death must be vacated. Farr 18 Fla. L. Weekly at S380; Foster v. State, 18 Fla. L. Weekly S215, 218 (Fla. April 1, 1993).

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Robert J. Krauss, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 12th day of November, 1993.

Respectfully submitted,



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