IN THE SUPREME COURT OF FLORIDA

NEWTON SLAWSON,

Appellant,

vs. **CASE NO. 90,045**

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

SUPPLEMENTAL ANSWER BRIEF OF THE APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROL M. DITTMAR
Assistant Attorney General
Florida Bar No. 0503843
2002 North Lois Avenue, Suite 700
Tampa, Florida 33607-2366
(813) 873-4739

COUNSEL FOR APPELLEE

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STATEMENT OF THE CASE AND FACTS

Defendant Slawson was charged with four counts of first degree murder and one count of killing an unborn child by injuring the mother in the deaths of Peggy Williams Wood, Gerald Wood, Jennifer Wood, and Glendon Wood (R. I/17-19).[1] Slawson pled not guilty but was ultimately convicted as charged. Following the penalty phase of the trial, a jury recommended that the court impose four sentences of death (DA-R. 2144-47). The judge followed the jury's recommendation, finding prior violent felony convictions for each murder based on the contemporaneous killings and, as to the murder of Peggy Wood, finding the aggravating circumstance of heinous, atrocious or cruel (DA-R. 2157-60). In mitigation, the trial court found no significant history of criminal activity, substantial impairment of the capacity to conform conduct to the requirements of law, and murders committed under the influence of extreme mental or emotional disturbance; as well as nonstatutory mitigation of abuse as a child and the ability to act kindly and be friendly (DA-R. 2160-61). Additional facts are recited in this Court's opinion affirming Slawson's judgment and sentences, Slawson v. State, 619

[1]References to the record on appeal in this case will be designated by the letter "R" followed by the applicable volume/page number; references to the supplemental record will be designated as "SR" followed by the applicable volume/page number; references to the record on appeal in Slawson's direct appeal from his judgments and sentences, Florida Supreme Court Case No. 75,960, will be designated as "DA-R" followed by the applicable page number.

So. 2d 255, 256-257 (Fla.), cert. denied, 512 U.S. 1246 (1994).

On November 1, 1996, Slawson filed an unsworn amended motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, alleging, among other things, that he was incompetent to proceed (R. I/184-327). Following a hearing pursuant to Huff v. State, 622 So. 2d 982, 983 (Fla. 1993), the trial court summarily denied the motion (R. II/368-370; III/35-56). A Notice of Appeal was filed, briefs were submitted, and oral argument was scheduled for September 1, 1998. However, Slawson filed a pro se Motion for Withdrawal and Termination of Appeal and, on August 28, 1998, this Court remanded the matter to the trial court to conduct a hearing on the motion (SR. I/5).

On September 28, 1998, the trial court held a hearing on Slawson's motion. The court conducted a Faretta-type[2] inquiry:

> THE COURT: Mr. Slawson, you have filed a Motion for Withdrawal and Termination of Appeal in this trial court, and I believe the supreme court has entered an order that I conduct a hearing, order of the Supreme Court of Florida, dated August 28, 1998, relinquishing jurisdiction to this court to conduct a hearing on your Motion for Withdrawal and Termination of Appeal, which was filed on June 8, 1998, and you are presently represented by whom?
>
> THE DEFENDANT: To my knowledge, no one except myself.
>
> THE COURT: Okay. So all you're -- you don't have a lawyer?
>
> THE DEFENDANT: No, ma'am. I'm trying to

[2]See, Faretta v. California, 422 U.S. 806 (1975).

just put an end to it.

* * *

THE COURT: You did know there was an appeal pending in the Supreme Court of Florida.

THE DEFENDANT: I had heard rumors, yes.

THE COURT: And it is that appeal that you wish to have withdrawn and your counsel that you knew nothing about terminated?

THE DEFENDANT: I would just like to turn the whole thing off on the chair and be done with it. I'm tired of playing with it.

THE COURT: There are no death warrants in this case, right?

MS. DITTMAR: No, Your Honor.

THE DEFENDANT: Not yet.

THE COURT: Mr. Slawson, do you know that you have a right to have the supreme court review the court's order denying summarily your motion for post-conviction relief that was filed by counsel. Do you understand that?

THE DEFENDANT: Yes, ma'am, I do.

THE COURT: You understand that the supreme court may disagree with this court's decision, that none of your claims had merit or that they were procedurally barred? They may disagree with that? You understand that?

THE DEFENDANT: I understand they may disagree, but do you understand, I don't have the slightest idea what you're talking about because I haven't seen anything in writing, one way of the other?

THE COURT: Well, by telling you that the supreme court may disagree, I'm telling you they might reverse that order and send your case back to this court for an evidentiary hearing. Do you understand that?

THE DEFENDANT: That's the first I heard of it, but yes, ma'am, I understand it.

THE COURT: And if they did that, the court would have to hold an evidentiary hearing on whatever issues the supreme court determined needed to be heard and make some factual findings. You understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. You understand that if you at this time persist in the withdrawal and termination of your appeal, that none of that

will ever happen? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You understand that if you persist in the withdrawal and termination of this appeal, that your death sentences will remain in effect? You understand that?

THE DEFENDANT: Absolutely.

THE COURT: And that eventually, I presume, they will be carried out?

THE DEFENDANT: Well, at least one of them.

THE COURT: Right. You do understand that?

THE DEFENDANT: Yes, ma'am, I'm far from incompetent, Your Honor. I'm quite capable of understanding all that has been told me. It's just that I am incompetently incapable of following that which I know nothing about.

THE COURT: I'm sorry.

THE DEFENDANT: I am incapable of following that which I know nothing about and until this minute, that's the most I heard in the past eight years about my case. I received nothing in writing. The only thing CCR ever sent me are these blank checks of here, sign this, and let us do what we please. That's all I ever heard from them.

THE COURT: You did get a copy of my order?

THE DEFENDANT: Yes, I get things from --

THE COURT: But you didn't get a copy of the motion.

THE DEFENDANT: I didn't get a copy of the motion, but I didn't understand what you were talking about.

THE COURT: Have you been examined since your sentence by any psychologist or psychiatrists?

THE DEFENDANT: No, ma'am, not since pretrial.

THE COURT: Now, that you know a motion has been filed on your behalf and there's a possibility that it could be -- that order could be reversed on appeal, do you still want to withdraw your appeal?

THE DEFENDANT: Indeed I do.

THE COURT: All right.

THE DEFENDANT: I just don't believe

they're representing me, Judge. They're representing themselves. They're not telling me a thing. I don't like being kept in the dark. I would as soon as be dead at best with --

THE COURT: You have a right to persist in that appeal. Do you understand that?

THE DEFENDANT: Which appeal?

THE COURT: I'm sorry?

THE DEFENDANT: The one that terminates the appeals, or the one I'm trying to terminate?

THE COURT: The appeal that you're trying to terminate, you have a right to persist in that appeal.

THE DEFENDANT: Yes, ma'am.

THE COURT: And, apparently, it was scheduled for oral argument.

THE DEFENDANT: I suppose. That's the first I heard about it.

THE COURT: Well, are you asking that the appeal be withdrawn and terminated because you haven't been kept apprised, or are you asking that it be withdrawn and terminated because you want to put an end to all of this.

THE DEFENDANT: I want to put an end to all of this, Your Honor, quite frankly, and I just don't feel that it's in anyone else's best interest; mine, yours, the State's, the taxpayers to let this continue to drag out. And I have no knowledge of what they're doing. They made it a point to keep me completely out of the light. They lie to me when they do talk to me. I've had enough. I'm not a cage person. I would as soon as go ahead and be dead.

* * *

THE COURT: All right. Mr. Slawson.

THE DEFENDANT: Yes, ma'am.

THE COURT: Has someone from Capital Collateral Representative contacted you in person?

THE DEFENDANT: They have been to see me quite a few times. The only one who actually was willing to let me speak in a complete sentence was Deborah Williams, the investigator, who has since resigned, I believe, other than termination, if I recall

the letter correctly.

But when Mr. DeBock came to see me, every time I would state my position, he would interrupt me, jump down my throat, tell me how unbelievable it was, brush it aside and go on to something else. He and I have never had a conversation. He speaks; I listen. Or if I try to speak, he interrupts and I listen again. Hardly a conversation.

THE COURT: Mr. Slawson, do you understand that the purpose of this hearing is to determine whether or not you are freely and voluntarily waving your right to counsel and terminating your appeal?

THE DEFENDANT: Yes, ma'am.

THE COURT: You understand that?

THE DEFENDANT: I freely and voluntarily waive my right to counsel and I seek to end this charade that is so -- that is called an appeal.

THE COURT: And I'm getting the feeling from listening to you, it's not so much that you want to terminate your appeal, but that you would like to terminate representation by Capital Collateral Representative.

THE DEFENDANT: Actually, Judge, in my mind, they're the same difference. They're the only boat I can take. It's a leaky boat. It's sinking and people don't know how to navigate. so either way, death is certain. I would just as soon go ahead and get it over with.

THE COURT: Well, do you want to terminate all future proceedings in your case?

THE DEFENDANT: Yes, ma'am. That's the whole idea. I didn't just type this up, write this up and run this in just to get a little attention. I'm here to stop it, to end it, to get a warrant signed to go to the electric chair and just be dead so that you can go stomp on somebody else. I'm tired of it. Tired of talking and not being heard. Tired of people talking about me. Tired of things being said about me. Tired of things being filed in my behalf that I know nothing about, that I don't even get to see or read or approve.

THE COURT: Well, that brings me back to

the same question. I get the feeling that what you are unhappy about is your counsel, not the fact that you have a matter on appeal.

THE DEFENDANT: Actually, it's both.

THE COURT: They're not one and the same. They're two different things.

THE DEFENDANT: I am extremely displeased with counsel; I'll agree with that. However, I fail to see how another attorney at this late of date would make any difference. Even if it were not from the Office of the Capital Collateral Representative, even if it were not a state attorney of any kind, even if it was from out of state, what difference would another attorney make at this late of date?

THE COURT: So you are not only asking that your attorney be withdrawn from your case, but you're asking that all attorneys be withdrawn from your case?

THE DEFENDANT: Yes, ma'am. I'm asking to terminate the appeal after which attorney representation is, at best, moot.

THE COURT: Let me ask you this. Where have you been incarcerated since your death sentence was imposed?

THE DEFENDANT: From 1990, April 11th, I was incarcerated at Florida State Prison on their death rows and moved around while they were beating the windows out and reinstalling those until June 4th, I think, of '93, when I was moved to the UCI, the new death row, and have been there ever since until brought here.

THE COURT: And during that time have you received any evaluations from any mental health individuals?

THE DEFENDANT: No, ma'am. No, ma'am.

THE COURT: Your attorney indicated in the motion, verified motion that they filed on your behalf that you were incompetent. Do you know what that verification was based upon?

THE DEFENDANT: Wishful thinking.

THE DEFENDANT: It would be nice if I were a gabbering idiot and simply unable to understand anything that is going on. Then they could do what they may with me as they please and who knows, might get me a bed in Chattahoochee and not Tallahassee. However, as far as competent based on direct medical

facts, I have no idea.

THE COURT: So if I allow your motion for withdrawal and termination of the appeal and discharge the Office of the Capital Collateral Crimes, do you want any other matters taken or filed on your behalf?

THE DEFENDANT: I would prefer not.

THE COURT: Well, do you intend to file any matters for yourself, like you filed very competently your motion for withdrawal and termination of appeal? You filed this yourself?

THE DEFENDANT: Yes, ma'am, I wrote that out myself.

THE COURT: And even though I didn't want to hear it, you filed it in the correct court and the supreme court told me I had to hear it. So is it your intention that there be no further proceedings on your behalf?

THE DEFENDANT: Yes, ma'am.

THE COURT: And that the sentence of death be executed?

THE DEFENDANT: Yes, ma'am.

* * *

THE COURT: Mr. Slawson, would you like to review the motion that was filed on your behalf that was denied by this court? That's the motion and the order that's presently on appeal in the supreme court. would you like to see that before you make this very weighty decision?

THE DEFENDANT: No, ma'am, it would serve no purpose.

THE COURT: All right.

* * *

THE COURT: All right, Mr. Slawson, for purposes of determining whether you are freely and voluntarily waiving your right to counsel and dismissing your appeal or asking that your appeal be dismissed, the supreme court will have to do that, let me ask you some questions about your educational background to begin with. How far did you go in school?

THE DEFENDANT: GED equivalency certificate and I thing a year-and-a-half of college, business administration.

THE COURT: When did you have that year-and-a-half in college business administration?

THE DEFENDANT: It was at the end of my Naval Service. That would have been ‘79, ‘80 or ‘81.

THE COURT: You were in the Navy?

THE DEFENDANT: Yes, ma’am.

THE COURT: How long?

THE DEFENDANT: Three years. No, I’m sorry, it was slightly over two years. I was discharged early.

THE COURT: And were you honorably discharged?

THE DEFENDANT: Yes, ma’am.

THE COURT: And what was your job in the Navy?

THE DEFENDANT: I was an operations specialist.

THE COURT: What operations?

THE DEFENDANT: I can’t go into that, Your Honor.

THE COURT: Was it classified?

THE DEFENDANT: I can’t even confirm that, Your Honor.

THE COURT: You had a special clearance?

THE DEFENDANT: I can’t confirm that, Your Honor. If Your Honor would look at the transcripts of trial, I think you’ll find that this was all hashed out then and that a Navy lieutenant commander came forward in uniform at the time and explained the circumstances.

THE COURT: Well, I assume if you had a death sentence imposed that you had a second phase and all of that would have been presented.

THE DEFENDANT: This came out during the guilt and innocence phase because the prosecutor wouldn’t let go. He kept wanting to know if I was some kind of super spy.

THE COURT: And how old are you?

THE DEFENDANT: Forty-three.

THE COURT: How old were you at the time of these offenses?

THE DEFENDANT: Thirty-five.

THE COURT: How long had you been out of the Navy at that time?

THE DEFENDANT: About nine years.

THE COURT: And what was your job after you were discharged?

THE DEFENDANT: Oh, various things, front-

end alignment technician, general vehicle mechanic, metal building erector, miscellaneous steel erector, iron worker, journeyman iron worker.

THE COURT: A metal building erector.

THE DEFENDANT: It's like those little sheds you see going up anywhere, like the people you see renting storage, those buildings. You start out with a skeleton and tie it up with metal steel and hope it will not blow over.

THE COURT: A spud wrench, do you know what a spud wrench is?

THE DEFENDANT: Yes, I do.

THE COURT: What is it?

THE DEFENDANT: It comes in various lengths from little ones to almost two feet long, pointed on one end for jamming and aligning steel with a wrench head that comes in various sizes, usually five-eighths, seven-eighths. I am very familiar with a spud wrench.

THE COURT: Counsel, if you're not aware, that's what our expert in a trial testified about its use and appearance.

So since you have been incarcerated for these offenses, have you continued any education?

THE DEFENDANT: No, ma'am.

THE DEFENDANT: It's virtually impossible to do so since the only materials allowed in by the prison are reading novels. Educational material is simply not permitted.

THE COURT: Do you read?

THE DEFENDANT: As much as I can. Crossword puzzles, find it puzzles, novels, any kind I can get. Family will send me books provided they can get through the mail room, provided the rules haven't changed this week.

THE COURT: Do you communicate with anyone outside of prison, written communication?

THE DEFENDANT: Sometimes family.

THE COURT: Pen pal type things?

THE DEFENDANT: Family. Although some of my friends have had their letters kicked back by the prison. I have never been told they had even written. Family most.

THE COURT: Prior to your incarceration on

this case, had you been treated by any mental health specialist?

THE DEFENDANT: No, ma'am.

THE COURT: You had never been under the care of a psychiatrist or psychologist?

THE DEFENDANT: No, ma'am.

THE COURT: You've never taken any antipsychotic drugs?

THE DEFENDANT: No, ma'am.

THE COURT: Since being incarcerated, have you been administered any medication or drugs of any kind?

THE DEFENDANT: Beg your pardon?

THE COURT: Since being incarcerated.

THE DEFENDANT: No, ma'am.

THE COURT: All right. so nobody's seen you and thought they needed to drug you?

THE DEFENDANT: No, ma'am. No, ma'am. Nobody felt the need to Thorazine me down.

THE COURT: And, counsel, I really don't think that we need to go into the full Faretta inquiry concerning his ability to understand the rules of procedure and evidence because he's indicating very clearly he has no intention of filing anything.

* * *

THE COURT: Mr. Slawson, do you feel that you're in need of a competency evaluation before the court makes a decision on your motion?

THE DEFENDANT: I don't feel I am in need. However, if the court would like to satisfy itself as to my competency, I'm more than willing to cooperate in anything you would like to do.

THE COURT: All right. Well, I'm not inclined to have you evaluated for a competency. I'm inclined to make my decision based upon my colloquy with you here today. So if there's some reason why you think I need the benefit of a competency evaluation, tell me now.

THE DEFENDANT: I have no reason to believe you need that, Your Honor. I certainly don't.

* * *

THE COURT: I think we've been through all of this, but, Mr. Slawson, at the request

of your present attorney, I will ask you again, are you filing this motion because of your dissatisfaction with the attorneys of record, or are you filing this motion because you truly want your appeal dismissed and all matters to cease?

THE DEFENDANT: I truly wish my appeal and all other matters to cease. I want a death warrant issued and I wish to be executed as soon as possible. I'm tired of it, Judge.

THE COURT: All right, now some people would people would say it's crazy.

THE DEFENDANT: I agree.

THE COURT: Apparently, your lawyer is one of them.

THE DEFENDANT: Under normal circumstances, I would agree, but when after living in a cage for eight years, there comes a time when simply drawing the next breath just takes too much effort when death is a release, not punishment, and I've come to view death as a release rather than punishment.

THE COURT: And I will ask the next question that Mr. DeBock has asked that I've already asked you, but I will ask you again. If the court were to discharge the Office of the Capital Collateral Crimes and appoint some other lawyer to represent you, would you like for your appeal to proceed with other representation?

THE DEFENDANT: I mean this with no disrespect, but this court has already appointed an attorney at one point in my case, one Simpson Unterberger, and when I complained that he didn't want to talk to me, you decided that was a motion to dismiss counsel and all I wanted you to do is make the attorney talk to me. I don't see any reason for another attorney, Your Honor. I'm just tired. I want to put an end to it, all of it.

THE COURT: All right. Thank you.

Counsel, anything further?

MR. PRUNER: No, ma'am.

THE COURT: From the Attorney General's Office.

MS. DITTMAR: No, ma'am.

THE COURT: From Capital Collateral Crimes?

> MR. DEBOCK: Nothing further.
> THE COURT: Thank you all very much.
> Mr. Slawson, I am granting your Motion for Withdrawal and Termination of appeal. I will enter an order on that and forward it to the supreme court with a transcript of this hearing so they may disagree with this decision, too. You understand that?
> THE DEFENDANT: Yes, ma'am.
> THE COURT: But that's going to be my order. Order granted for withdrawal and termination of appeal and I will send you a copy.
> THE DEFENDANT: Thank you, ma'am.
> THE COURT: Thank you.
> THE DEFENDANT: Can I request being transported back to death row?
> THE COURT: Yes, you may. And probably you have a right to appeal this order. so it will be 30 days from the date of the order, you'll have a right to appeal it if you want to. All right?
> THE DEFENDANT: Yes, ma'am.

(SR. I/82-117). Chris DeBock, appearing from the Office of Capital Collateral Regional Counsel - Middle (CCRC) on behalf of Mr. Slawson, requested that the court order a psychological evaluation (SR. I/96). The court denied the request, and thereafter entered an Order finding Slawson was freely, intelligently and voluntarily waiving his right to counsel and granting the pro se motion (SR. I/78, 114).

On December 17, 1998, this Court again remanded the case, directing that a psychological evaluation be conducted, stating:

> After reviewing Slawson's case, this Court finds it necessary to remand to the circuit court for Slawson to undergo a mental health evaluation to aid in determining his competency. After such a mental health

> evaluation is conducted, Judge Allen shall once again determine whether Slawson is competent to make a knowing, intelligent, and voluntary waiver of his collateral counsel and proceedings. If Judge Allen finds that Slawson is competent to make a knowing, intelligent, and voluntary waiver, then she shall report that finding to this Court. If Judge Allen finds that Slawson is not competent to make a knowing, intelligent, and voluntary waiver, she shall report that finding to this Court as well.

(SR. II/121). Pursuant to this remand, the trial court appointed Dr. Michael S. Maher and Dr. Sidney Merin to evaluate Slawson's competency "to proceed pro se with any post-conviction proceedings" (SR. II/125-129). Both Dr. Maher and Dr. Merin had examined Slawson prior to his trial, and both had testified at his trial in his behalf (DA-R. 874, 956).

Dr. Maher thereafter submitted a four-page "Criminal Competency Assessment" which indicated that he had conducted a clinical psychiatric interview and mental status examination with Slawson on February 8, 1999, and, on the same day, had interviewed Craig Alldredge, Slawson's trial counsel, and Chris DeBock, Slawson's postconviction attorney (SR. II/135-138). Dr. Maher determined that Slawson is aware of the nature of his conviction, the possibility that various appeals may be available to him, and his present death sentence, that he is generally aware of the adversary nature of the postconviction legal proceedings, and that he has the capacity to manifest appropriate courtroom behavior (SR.

II/135-136). However, Dr. Maher felt that Slawson's "capacity to understand who is working in his interest and who is working against his interest" was inadequate due to a paranoid thinking pattern, that his capacity to understand facts pertinent to the proceedings was inadequate, and that his capacity to testify relevantly was impaired (SR. II/135-136). Therefore, Dr. Maher concluded that Slawson was not competent to proceed pro se with any postconviction proceedings (SR. II/135). According to Dr. Maher's report, his finding of Slawson's paranoid thinking pattern was based on Slawson's detailed descriptions of several scenarios which would indicate his innocence, in conjunction with defense counsel's representations that these scenarios had been investigated and were not supported by the facts; counsel's information had been explained to Slawson, but Slawson had "apparently been incapable of understanding its meaning and relevance to his case" (SR. II/136-137). Dr. Maher's recommendation stated:

> This man's condition suggests a paranoid personality with fixed psychotic delusional beliefs. However, superficially he appears to be non-psychotic. Thus, in spite of considerable indications from his defense counsel that he is incapable of responding in a logical and rational way to the legal circumstances and facts of the case, the possibility of malingering must be considered. In view of this possibility, my recommendation would be immediate hospitalization in a secure psychiatric forensic facility in order to evaluate the underlying psychotic thinking and the possibility of malingering. Such an extended inpatient evaluation may allow

> greater insight into this issue, as well as provide opportunities for treatment, which are likely to restore competency if the condition is in fact genuine.

(SR. II/138).

A six-page psychological report was also submitted by Dr. Sidney Merin, concluding that Slawson was in fact competent to proceed with his pro se postconviction pleadings (SR. II/139-144). Dr. Merin's report, unlike Dr. Maher's, notes that Slawson is presently attempting to vacate any appeals and explores the reasons stated by Slawson for taking such action (SR. II/139-144). Dr. Merin's evaluation was conducted through a history-taking session, clinical observations, a brief mental status examination, and a competency evaluation instrument; Merin also reviewed Slawson's jail clinic chart (SR. II/139, 143).

Dr. Merin's written report states, in pertinent part:

> Mr. Slawson immediately recalled this examiner's full name. He remembered me as having been a defense witness some ten years ago.
>
> Mr. Slawson is a verbally spontaneous, informative, and cooperative man. He wore corrective glasses.
>
> To questioning, the subject was uncertain why he had been returned to this jurisdiction, noting he had withdrawn his appeals. When I asked if CCR was involved, he stated they had his case for some eight years "and the only thing they did was to attack me--they kept talking about me being incompetent." Mr. Slawson explained his reasoning for his disappointment and resentment of CCR by

indicating they had “attacked” him “instead of attacking police procedure, evidence, conviction, or anything---they say I don’t understand the gravity of the nature of the consequences of my decision to drop my appeals.”

Mr. Slawson then reasoned CCR must have considered him to be incompetent since he wished to terminate his appeals. He indicated “that was their whole case,” referring to their insistence he was incompetent, using that as the only basis for appealing his sentence. Mr. Slawson added, “they (CCR) said I was too incompetent to execute, but not so incompetent to hospitalize.” That appeared inconsistent and contradictory to Mr. Slawson as he had conferred with CCR.

In an effort to determine the possible basis for CCR’s insistence they use an incompetence defense, we explored the extent to which he may have had mental health assistance during the past ten years. Mr. Slawson indicated he had seen no mental health professional since 1989-90 when he was convicted and sentenced. He had never been under any psychiatric treatment in prison. He considered CCR’s reasoning would be as follows, “If I’m incompetent, then nothing I say makes any difference--If I don’t know what I’m saying then nobody has to hear me.” Thus, if CCR had developed that conclusion, Mr. Slawson then reasoned they would not have to deal with his case and simply dismiss it on the basis of incompetence.

The subject discovered what he believed CCR was doing in October or November 1998. He then wrote to Judge Allen in Hillsborough County and “filed a motion to drop my appeals--she granted my motion.” Subsequently, Mr. Slawson received an order from the Florida Supreme Court returning him to Tampa to “determine if I was competent enough to make a knowing and informed waiver to my right to a Capital Collateral appeal.”

Mr. Slawson volunteered, it was Dr. Michael Maher's understanding the present examination was to determine whether he was competent enough to represent himself. Mr. Slawson considered he was competent and could represent himself at a level of capability adequate enough to present his position to the Court.

To further questioning, Mr. Slawson noted "there are CCR appeals left--I want the appeals and process over and kill me--execute me--I'm tired of beating my head against the wall trying to get murdered--I've been used by CCR as a cash cow--they've ignored me and kept me out of the loop." That statement represented his level of frustration and revealed no evidences of psychotic thinking. Rather, it was clear he had given this matter a considerable amount of thought, and understands that the average person would view his decision as being unthinkable. In contrast, Mr. Slawson views his decision as a reasonable extension of his death sentence and the many years of thoughts, feelings, and experiences he has had while on death row.

Mr. Slawson denies receiving any copies of any documents CCR was to have generated on his behalf. He noted he received "one liners" about what would happen to him as he would press his position with CCR. He considered, if CCR had handled his case properly, they would have had to defend him rather than trying to declare him incompetent. He claims CCR had all the information he had within his possession that could have been used in his behalf. When he presented CCR with his thoughts and arguments concerning his defensive appeals, he indicated CCR would then claim they could not accept his beliefs and position in that they were not permitted to raise the particular issues he desired.

This examiner asked Mr. Slawson for some examples of his position. He stated the following:

> It was Mr. Slawson's belief his confession was coerced. In that event, he referred to a detective present while he was being interrogated. He claimed that detective intimidated him by pointing a gun at him. He considered that to have been coercive.
>
> Mr. Slawson holds the position three witnesses, one of whom is a female, could have presented exculpatory testimony. Here, Mr. Slawson refers to the prosecution's reference to the markings on the bullet as being "similar" and "not the same" as would be found on bullets from his own weapon.
>
> Mr. Slawson claims the transcripts of the trial had been "clarified" or sanitized. It was his belief that transcript was tampered with in order to show what the State wished it had been and not "the way it was."

Mr. Slawson claimed he had given details of each of these claims to CCR. He indicated further there was much more information which he finds unnecessary to relate at this point.

The subject acknowledges he dislikes CCR, but also notes he has exhausted all of his appeals and that anything short of being executed would be a waste of tax payers' money.

When this examiner questioned his judgement with regard to his willingness to now avoid resisting execution, Mr. Slawson stated "I've become accustomed to the concept of my own personal death, decades ago." When I noted he had been convicted one decade ago, he explained his position by stating "I'm an agnostic--death is inevitable, whether it's now or thirty to forty years from now."

Clinical observations revealed no evidences of a thought disorder. While he clearly was angry with CCR, and while he was insistent about the State proceeding with his execution,

> those considerations did not rise to the level where they would be identified as psychotic thoughts. They would be more consistent with chronic depression found in a dysthymic disorder. Such depression does not necessarily distort reality, but rather reflects a very long-term dysthymia without delusions or hallucinations. While his judgement may be considered poor with respect to his present decisions, his ability to develop judgements cannot be considered impaired. That is, unimpaired judgement can allow for his freedom to make good judgements or bad judgements. Based upon his own position, he has chosen a judgement which might be considered to reflect inappropriate self interest, representing a decision others would find quite unappealing.
>
> **REVIEW OF JAIL CLINIC CHART:**
>
> Prior to examining Mr. Slawson on 2/17/99, this examiner reviewed his jail medical chart. That chart contained no suggestions of any psychological or psychiatric problem. It referred to a chronic rash on his back, experiencing a problem with background noise (Mr. Slawson complained of a mild hearing problem), and bursitis in his left knee and hip. He noted he did have past mental health problems, which this examiner concluded had referred to his pre-conviction mental or emotional state. The chart indicated he appeared to be going blind in his right eye. while in prison, he was administered no psychotropic medications within the past year. He had not been on any suicide watch nor required any particular precautions. He had refused a medical examination in 1997, details unknown. Hypertension was reported as of September 1998. Mr. Slawson claimed he was not treated for the hypertension while in prison.

(SR. II/140-143). After reviewing the six primary criteria for determining competency and concluding they all supported a finding

of competency, the report continued:

> Observations of Mr. Slawson reveal him to be a bright man of average to above average intelligence. He has given his position a considerable amount of thought and has concluded he has exhausted all reasonable efforts in his appeals and in having delegated responsibility for his defense to CCR. He no longer has confidence in them, preferring to rely wholly on his own decisions. Those decisions include the above mentioned position wherein he has exhausted his appeals and has reconciled himself to having long ago accepted the sentence of the Court and looks forward to his own demise. While he remains angry and disappointed with CCR's efforts, he is not distressed by his own decisions to move forward in the direction he is presently choosing.
>
> Mr. Slawson is an assertive, knowledgeable, and determined man who finds no legal, practical, moral, or financial reason not to proceed with his execution.
>
> It is this examiner's opinion Mr. Newton Slawson **IS COMPETENT** to proceed with his pro se post conviction pleadings. He has reconciled himself to being executed and no longer has any interest in pursuing any further appeals. He knowingly and willingly is prepared thus to accept his sentence.

(SR. II/144). After receiving these reports, Judge Allen appointed a third mental health expert, Dr. Walter Afield, to examine Slawson (SR. II/130). Dr. Afield concluded that Slawson was "perfectly competent in every regard" to proceed with any postconviction proceedings (SR. II/146). Dr. Afield found that Slawson did not suffer from any psychiatric illness and that there was nothing to interfere with Slawson representing himself (SR. II/146). Dr.

Afield described the situation:

> Mr. Slawson says he has been tried, convicted, and sentenced to four death penalties. He is charged with First Degree Murder of the Woods' family in 1989. He said he did not do it, but there was so much overwhelming evidence and he was threatened with a gun by the police if he did not sign a confession, and he did. I am sure these issues were gone into in detail in the court. He feels his attorney did not do much to help him. In any event, he was found guilty March 20, sentenced April 10, 1990 to Starke, the Union Correctional Institute. Apparently, an appeals organization, CCR, took over the case for eight years and he said "all they did was nothing." He said they were trying to find him incompetent so he could not be executed. He says he is not psychotic. He has never been on medication and has no problem with representing himself. He also has no problem with facing death. He says he is very much of a fatalist as to what will be, will be. He says he has been seen by two physicians in 1988 [sic] and 1999, Dr. Merin and Dr. Maher. Currently, Dr. Maher says he is not competent, according to Mr. Slawson. Dr. Merin says he is. He feels that this thing is just being prolonged. All his appeals have been exhausted. If he changes his mind, he will appeal, but he would just like to get this thing over with. He said 10 years is enough and quotes Nathan Hale's, "give me liberty or give me death." He said he is ready to do that.

(SR. II/145). Dr. Afield recounted some of Slawson's personal, physical and mental history, and noted that Slawson is quite bright; oriented to time, place and person; with "no rambling, circumlocution, evasion, or tangentiality;" and "no autism, ambivalence, loosening of his associations, hallucinations, delusions, or even depression" (SR. II/146).

Judge Allen conducted another hearing on March 12, 1999 (SR. II/148). The State and Mr. Slawson stipulated to the findings of the doctors' reports, and based on these reports the judge found Slawson to be competent to waive his right to counsel and withdraw his appeals (SR. II/151). This appeal follows.

SUMMARY OF THE ARGUMENT

I. No violation of Ake v. Oklahoma, 470 U.S. 68 (1985), has been demonstrated in this case. Ake stands only for the proposition that a state cannot deprive a defendant of his due process right to necessary expert assistance. No such deprivation has even been alleged in this case; CCRC's argument challenges only the adequacy of Dr. Afield's report within the framework of Florida Rule of Criminal Procedure 3.211. However, the report was sufficient to address the question presented, and no basis for relief has been offered in this issue.

II. No due process violation has been demonstrated in this case. Although CCRC claims it was necessary for the court below to have conducted a full-blown evidentiary hearing on the issue of Slawson's competency, due process does not require such a hearing anytime a defendant waives rights, even when the waiver is one such as that presented in this case. In addition, the court below had no jurisdiction to conduct a hearing since this matter had been remanded for a limited reason, and any evidentiary hearing would have been beyond the scope of the remand authorized by this Court. The trial judge clearly had a sufficient basis for her finding of a voluntary waiver under this Court's case law.

III. The trial court's finding that Slawson has voluntarily waived his rights to counsel and to further postconviction

proceedings is well supported in this record. The extensive Faretta hearing and the reports of the mental health experts provide ample support for the findings of competency and a knowing, voluntary waiver.

IV. No reasonable basis for revisiting this Court's holding in Hamblen v. State, 527 So. 2d 800 (Fla. 1988), has been offered. Any modification of Hamblen could interfere with a defendant's constitutional right to self-representation and violate Faretta. Furthermore, Hamblen was a direct appeal case, and any reconsideration of that decision should be in a case in the same procedural posture as Hamblen. CCRC's request for the opportunity to present mitigating evidence is inappropriate in this postconviction case, where an adversarial penalty phase was conducted at the time of trial and extensive mitigating evidence was presented at that time.

ARGUMENT

ISSUE I

WHETHER SLAWSON IS ENTITLED TO ANY RELIEF BASED ON AN ALLEGED VIOLATION OF AKE V. OKLAHOMA.

CCRC initially claims that the report submitted below by Dr. Walter Afield was insufficient, in that it failed to comply with Florida Rule of Criminal Procedure 3.211. Although CCRC cites Ake v. Oklahoma, 470 U.S. 68 (1985), in the issue heading on this claim, Ake is not otherwise cited in his argument and does not seem to be implicated by his assertions. Since Ake merely holds that due process prohibits a state from denying an indigent defendant necessary expert assistance, and there has been no showing in this case of any state action interfering with Slawson's right to such assistance, no due process violation has even been alleged. See, Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992), cert. denied, 513 U.S. 1162 (1995).

CCRC's argument as to the sufficiency of Dr. Afield's report does not compel the granting of any relief. This Court remanded this case, directing Judge Allen to secure a mental evaluation for Slawson, and the judge secured not one but three such evaluations. Dr. Afield's report adequately addressed the question presented for consideration by Judge Allen and substantially complied with Rule 3.211. The fact that Judge Allen used a form to appoint Dr. Afield which tracked Rule 3.211 and that Dr. Afield's subsequent report

may not have addressed every single aspect required in a Rule 3.211 examination is immaterial, particularly since this case did not involve a question of Slawson's competence to stand trial, the situation to which Rule 3.211 applies.

By continually analogizing this case to those which consider the question of a defendant's competence to stand trial, CCRC misapprehends the concept of competence. A person is not simply competent or incompetent, as may be the case with other psychological terms; no particular intelligence level or test result will determine a person's "competence." Instead, competency is a fluid concept which necessarily depends on the nature of the particular action a person is seeking to take. For example, a person in Florida that has attended law school and passed the Bar examination may be competent to practice law, but still not competent to perform brain surgery. A criminal defendant may be considered competent to represent himself even if he has not attended law school or passed the Bar. The question of competence is really just asking if a person knows what they are doing. Thus, although mental health professionals may assist a trial judge in determining whether a defendant has the mental capability to understand facts and appreciate consequences, the necessity or usefulness of an extensive mental health evaluation may differ depending the particular action a person is being considered competent to take.

In addition, it is not even necessary for a court to actually receive an expert's report in order to make a determination on competency; reports are merely advisory to the trial judge. Muhammad v. State, 494 So. 2d 969, 973 (Fla. 1986), cert. denied, 479 U.S. 1101 (1987). Where there exists a conflict between reports that have been received, it is the function of the trial judge to resolve the dispute. Castro v. State, 24 Fla. L. Weekly S411, 412 (Fla. Sept. 2, 1999). In this case, the evaluation and report by Dr. Afield were "comprehensive and responsive to the needs of the trial court," and therefore sufficient to support the findings rendered below. Sanchez-Velasco v. State, 702 So. 2d 224, 228 (Fla. 1997), cert. denied, 119 S. Ct. 42 (1998).

CCRC criticizes Dr. Afield for relying extensively on Slawson's self-report and asserts that his evaluation was less reliable than that found inadequate by this Court in Mason v. State, 489 So. 2d 734 (Fla. 1986). In Mason, this Court was reviewing a finding of competency to stand trial which, again, is not the issue in this case. Slawson's competency was fully explored at the time of his trial and the finding of competency from that time still presumptively exists. See, Durocher v. Singletary, 623 So. 2d 482, 484 (Fla. 1993). Although CCRC's brief continually tries to align this case with one in which a trial court is presented with some question as to a defendant's competence to stand trial, the issue in this case is more

appropriately considered as Slawson's right to represent himself and to control his own destiny. For determining whether Slawson could freely and voluntarily waive his right to postconviction proceedings, Dr. Afield's report was more than sufficient, particularly since it served primarily to corroborate the judge's independent findings after the Faretta inquiry and the extensive report by Dr. Merin. Therefore, this issue does not provide any basis for this Court to reject Judge Allen's findings with regard to Slawson's ability to waive any further appeals.

ISSUE II

WHETHER THE TRIAL COURT DENIED DUE PROCESS IN FOLLOWING THIS COURT'S MANDATE.

CCRC also claims that Slawson's right to due process was violated by the trial court's failure to conduct a full evidentiary hearing with regard to Slawson's competency. Clearly, due process does not require a full evidentiary hearing in order for a defendant to be deemed competent to freely and voluntarily waive any particular right. If due process required such a hearing in order to establish any voluntary waiver, no Faretta inquiry would be sufficient without a competency hearing, no confession from a custodial interrogation would be admissible without a competency hearing, and no record acknowledgment of a defendant's waiver of his right to testify would be adequate without a competency hearing.

CCRC has not cited a single case which holds that a full evidentiary hearing on competency is necessary before a defendant can be found competent to waive his rights to counsel and/or postconviction proceedings. Defendants are routinely found competent to waive their right to counsel without such a hearing; a Faretta inquiry is usually sufficient for such purposes. CCRC's reliance on Pate v. Robinson, 383 U.S. 375 (1966), is misplaced. That case is obviously distinguishable as one considering the issue of a defendant's questionable competence to stand trial. Following a defendant's conviction, sentencing, and direct appeal, a state's

interest in the case has increased and the demands of due process are accordingly reduced. Medina v. State, 690 So. 2d 1241 (Fla. 1997). Thus, Pate v. Robinson is not controlling.

This Court has permitted a number of capital defendants to proceed with what Slawson seeks to do in this case without having had a full evidentiary hearing on the question of competence, including two such defendants that have been executed, Michael Durocher and James Hamblen. Sanchez-Velasco, 702 So. 2d at 226-228; Durocher, 623 So. 2d at 484-485; Hamblen v. Dugger, 546 So. 2d 1039, 1042 (Fla. 1989); Hamblen v. Dugger, 719 F.Supp. 1051, 1061 (M.D. Fla. 1989); see also, Gilmore v. Utah, 429 U.S. 1012, 1019 (1976) (capital defendant entitled to waive all mitigation and appeals based on report of competency, despite lack of adversarial hearing). The fact that one of the doctors below reported that he believed Slawson to be incompetent to proceed pro se does not compel the holding of a hearing when the trial court's findings of competency and of a voluntary waiver have extensive support in the record, as outlined in Issue III.

CCRC's reliance on this Court's opinion in Provenzano v. State, 24 Fla. L. Weekly S406 (Fla. August 26, 1999), is similarly misplaced. The instant case does not present a situation in which the State is taking adversarial action against a defendant. Rather, Slawson is simply attempting to assert his constitutional right to control his own destiny. Faretta; Durocher, 623 So. 2d at

484 (“Durocher ... presents every indication that he is knowingly, intelligently, and voluntarily waiving his right to collateral proceedings through his adamant refusal to allow CCR to represent him. Regardless of our feelings about what we might do in a similar situation, we cannot deny Durocher his right to control his destiny to whatever extent remains” [footnote omitted]); Traylor v. State, 596 So. 2d 957, 968 (Fla. 1992); Hamblen, 527 So. 2d at 804 (“in the final analysis, all competent defendants have a right to control their own destinies”). Thus, the necessity of an adversarial hearing simply does not exist in this case.

More importantly on the facts of this case, the court below did not have jurisdiction to conduct an evidentiary hearing, and therefore no error can be found with regard to the judge’s failure to hold such a hearing. A trial court’s jurisdiction during a temporary remand from an appellate court is limited to the specific purpose identified in the order relinquishing jurisdiction. Hoffman v. State, 613 So. 2d 405, 406 (Fla. 1992) (“When a lower court receives the mandate of this Court with specific instructions, the lower court is without discretion to ignore that mandate or disregard the instructions”); O. P. Corp. v. Village of North Palm Beach, 302 So. 2d 130, 131 (Fla. 1974); Department of Health and Rehabilitative Services v. Davenport, 609 So. 2d 137 (Fla. 4th DCA 1992); Marine Midland Bank Central v. Cote, 384 So. 2d 658, 659 (Fla. 5th DCA 1980); Mendelson v. Mendelson, 341 So. 2d

811, 813-814 (Fla. 2d DCA 1977) ("No principle of appellate jurisdiction is more firmly established than the one which provides that a trial court utterly lacks the power to deviate from the terms of an appellate mandate"). Because this Court's order remanding this case specified the purpose of the remand as securing a mental health evaluation, the court below could not exceed the scope of this directive. Even if this Court now believes that as a matter of policy an evidentiary hearing would be more appropriate than the evaluation mandated by the remand order, this is a court of law, not a court of policy. Since no legal error has been presented, this Court must affirm the trial court's findings. The implementation of additional procedural protections as a matter of policy in this situation must be accomplished through this Court's rulemaking authority, and not in the context of a specific appeal.

No error has been demonstrated with regard to the lack of an evidentiary hearing on Slawson's competency. Nothing has been offered in this issue which justifies any rejection of the trial court's findings, and therefore this Court should dismiss Slawson's pending postconviction appeal.

ISSUE III

WHETHER THE TRIAL COURT ERRED IN FINDING THAT SLAWSON HAS VOLUNTARILY WAIVED HIS RIGHTS TO COUNSEL AND TO FURTHER POSTCONVICTION PROCEEDINGS.

CCRC's next claim alleges that the trial court's finding of a voluntary waiver is not supported by the record. This allegation is apparently based on the assertion that Slawson's reasons for waiving counsel and further proceedings "have never been entirely clear" (CCRC Supplemental Brief, p. 23). However, the constitutional right to waive counsel (or any other right) has never been limited to those situations in which a satisfactory reason for the waiver existed. Therefore, the lack of a reason which may be acceptable to CCRC does not justify this Court's interference with Slawson's decision to end his appeals. See, Durocher, 623 So. 2d at 484; Lenhard v. Wolff, 443 U.S. 1306, 1312-1313 (1979).

Clearly, the trial court's finding of a voluntary waiver is fully supported by the record presented. Contrary to CCRC's claim that Judge Allen did no more than "count noses" and declare a two-of-three majority among the mental health experts, the record reflects Judge Allen carefully and conscientiously weighed her decision. First, she conducted an extensive Faretta-type inquiry, at which time Slawson unequivocally asserted his desire to discharge counsel and withdraw any further appeals (SR. II/83, 85, 93-94, 98-100, 115). Slawson clearly acknowledged his understanding

of the existence of available appeals and the consequences of his decision to terminate his appeals (SR. II/89-94, 98-100, 102). He stated that he had not been evaluated or treated by any mental health professionals since prior to his trial, and had not been administered any medications or drugs while incarcerated (SR. II/92, 101, 109-110). He had received a GED equivalency and had about a year and a half of college level business administration following an honorable discharge after two years in the Navy (SR. II/105-106).

Although such an inquiry has been sufficient in prior cases to support a finding of a voluntary waiver of postconviction appeals (as in Durocher and Hamblen), this Court directed that a mental evaluation be conducted to further explore the adequacy of Slawson's waiver. Judge Allen then appointed not one, but two experts to evaluate Slawson (SR. II/125-129). Significantly, neither of these experts were disinterested witnesses, but both had previously examined Slawson as *defense* witnesses, and both testified in his behalf at trial (DA-R. 874, 956). Although Dr. Maher found Slawson to be incompetent, this finding was based on his identification of conflict between Slawson and CCRC (SR. II/136-138). Dr. Maher characterized Slawson as paranoid based on Slawson's statements that his attorneys were not acting in his behalf, despite the fact that CCRC is, at this time, the only party acting against Slawson's stated desires.

Dr. Merin and Dr. Afield both concluded that Slawson was competent in well-reasoned reports (SR. II/139-144; 145-146). Dr. Merin had reviewed Slawson's records and explored with Slawson the reasons for wanting to abandon any further appeals (SR. II/140-141). Although finding that Slawson suffered from frustration and depression, Dr. Merin found no evidence of psychotic thinking and no impairment to Slawson's ability to develop judgments (SR. II/142). Dr. Merin concluded that Slawson had average to above average intelligence, and had given a considerable amount of thought to his position (SR. II/144).

CCRC notes Slawson's repeated comments about dissatisfaction with his legal representation as proof that Slawson has not truly accepted his fate, but simply has doubts about whether justice can ever be realized in his case. To be sure, Slawson has continually expressed his belief that he has legal issues, including his allegations that his confession was coerced, which are not being addressed. However, Slawson's comments demonstrate nothing more than a disagreement with this Court's affirmance of his conviction and sentence. See, Slawson, 619 So. 2d at 257-258 (rejecting claim that the trial court erred in denying his motion to suppress confession). In Sanchez-Velasco, this Court noted that any contradiction between a defendant's assertion that his attorneys were not adequately representing him and his request to withdraw his appeal would not be sufficient in and of itself to reject a

finding of competency. 702 So. 2d at 227. Surely more than mere disagreement with something this Court has done is required to vitiate a finding of competency.

Based on this record, the trial court's finding that Slawson's waiver is free, knowing, and voluntary is fully established. Even if this Court disagrees with the wisdom of Slawson's personal decision or the particular findings below, this Court is not a fact-finding body and has an obligation to respect the findings of the court below, since they are supported by the record. No further proceedings are warranted in this case.

ISSUE IV

WHETHER THIS COURT'S HOLDING IN HAMBLEN V. STATE SHOULD BE RECONSIDERED.

CCRC's last claim suggests that this Court should revisit its prior decision in Hamblen v. State, 527 So. 2d 800 (Fla. 1988). No reasonable basis for reconsideration of that decision has been offered. In fact, given Hamblen's grounding in the constitutional right to self-representation acknowledged by the United States Supreme Court in Faretta, it is not even clear this Court would have the authority to significantly recede from Hamblen. See, Farr v. State, 656 So. 2d 448, 451 (Fla. 1995) (Kogan, J., concurring in part and dissenting in part); People v. Silagy, 461 N.E.2d 415 (Ill.), cert. denied, 469 U.S. 1067 (1984).

Even if a reconsideration of Hamblen was possible and desirable, however, this clearly is not the case in which to do so. Hamblen was a direct appeal case where this Court rejected the suggestion that when a defendant does not contest the State's seeking a death sentence, a trial court must appoint an attorney -- someone in the nature of a guardian ad litem -- to represent society's interest in insuring the appropriateness of the death penalty. The appropriateness of the death penalty was fully challenged in this case during an adversarial penalty phase proceeding, at which time mitigating evidence was presented, considered, and weighed by the trial judge and thereafter reviewed by this Court on direct appeal. To the extent that independent

appointed counsel may be desirable to fulfill a trial court's obligation to determine an appropriate sentence and this Court's obligation to review death sentences, that issue must be addressed in a case in the same procedural posture as Hamblen, i.e., a direct appeal. Consideration of the issue during postconviction proceedings, particularly when a defendant's decision to waive counsel does not arise until after the death sentence has been imposed and affirmed on appeal, is clearly inappropriate.

Thus, CCRC's offer to accept appointment as independent counsel in order to investigate and present mitigating evidence must be declined. There is no opportunity for the presentation of mitigating evidence during postconviction proceedings; the appropriateness of the death penalty is an issue that, by this time, is clearly procedurally barred. Inasmuch as this Court has already upheld the propriety of Slawson's four death sentences during his direct appeal, and even the interests identified in Justice Barkett's dissenting opinions in Hamblen and Farr cannot be furthered by the appointment of independent counsel at this point, Issue IV must be rejected.

CONCLUSION

Based on the foregoing arguments and authorities, the trial court's finding of Slawson's voluntary waiver must be affirmed, and his postconviction appeal must be dismissed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROL M. DITTMAR
Assistant Attorney General
Florida Bar No. 0503843
2002 N. Lois Avenue, Suite 700
Tampa, Florida 33607-2366
(813) 873-4739
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Mark S. Gruber, Office of the Capital Collateral Regional Counsel - Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619-1136, this _____ day of September, 1999.

COUNSEL FOR APPELLEE