

FLORIDA SUPREME COURT

6/11/2019

RECEIVED



RON DESANTIS
GOVERNOR

June 11, 2019

Warden Barry Reddish
Florida State Prison
PO Box 800
Raiford, Florida 32083

Re: Execution Date for Gary Ray Bowles, DC#086158

Dear Warden Reddish:

Enclosed is the death warrant to carry out the sentence of Gary Ray Bowles, as well as a certified copy of his judgment and sentence. I have designated the week beginning at 12:00 noon on Monday, August 19, 2019, through 12:00 noon on Monday, August 26, 2019, for the execution. I have been advised that you have set the date and time of execution for Thursday, August 22, 2019, at 6:00 p.m.

This letter is incorporated into and made a part of the death warrant identified above.

Sincerely,

A blue ink signature of Ron DeSantis, consisting of a stylized 'R' followed by a series of loops.

Ron DeSantis
Governor

Enclosures

FILED
2019 JUN 11 PM 4:31
TALLAHASSEE, FLORIDA

Warden Barry Reddish
June 11, 2019
Page 2

cc:

Honorable Charles Canady
Chief Justice
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

Honorable Mark H. Mahon
Chief Judge, Fourth Judicial Circuit
501 West Adams St.
Jacksonville, Florida 32202

Secretary Mark Inch
Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

Carolyn Snurkowski
Assistant Deputy Attorney General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-0001

Robert S. Friedman
Karin L. Moore
Capital Collateral Regional Counsel -
North
1004 Desoto Park Drive
Tallahassee, FL 32301

Michelle Whitworth, Coordinator
Office of Executive Clemency
4070 Esplanade Way
Tallahassee, Florida 32399-2450

Gary Ray Bowles, DC#086158
Union Correctional Institution
7819 NW 228th Street
Raiford, Florida 32026-4400



STATE OF FLORIDA

**ASHLEY MOODY
ATTORNEY GENERAL**

June 11, 2019

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399-0001

RE: Gary Bowles

Dear Governor DeSantis:

Gary Bowles pleaded guilty to one count of first-degree murder on May 16, 1996, for the November 16, 1994, first-degree murder of Walter Hinton in Duval County, Florida. He was sentenced to death on September 6, 1996, by the trial court following the 10-2 death recommendation by the jury. The Florida Supreme Court, on direct appeal, affirmed Bowles' conviction, but as to the death penalty sentence, the court vacated the death sentence and remanded the case to the trial court for a new penalty phase. *Bowles v. State*, 716 So. 2d 769 (Fla. 1998).

On remand before a new jury, Bowles was again sentenced to death in Duval County, Florida. After the jury returned its unanimous recommendation of a sentence of death, the trial court on September 7, 1999, followed that recommendation and sentenced Bowles to death. On appeal from resentencing, the Florida Supreme Court affirmed Bowles' new death sentence. *Bowles v. State*, 804 So. 2d 1173 (Fla. 2001). His conviction and the death sentence became final when the United States Supreme Court denied his petition for writ of certiorari, June 6, 2002, in *Bowles v. Florida*, 536 U.S. 930 (2002).

Bowles filed his initial motion for post-conviction relief on December 9, 2002. That motion was denied by the circuit court on August 12, 2005, and the Florida Supreme Court affirmed the circuit court in Bowles' appeal and denied his state habeas in *Bowles v. State*, 979 So. 2d 182 (Fla. 2008).

Bowles then filed his initial federal petition for writ of habeas corpus in the U.S. District Court for the Middle District of Florida on August 8, 2008. The federal district court denied Bowles' habeas petition on December 23, 2009. Bowles appealed on January 15, 2010, and

the Eleventh Circuit Court of Appeals affirmed the District Court's denial in *Bowles v. Secretary, Fla. Dept. of Corrections*, 608 F.3d 1313 (11th Cir. 2010) *cert. den. sub nom.*, *Bowles v. McNeil*, 562 U.S. 1068 (2010).

Bowles returned to the state trial court and filed a successive motion for post-conviction relief on March 19, 2013, and relief was denied July 7, 2013. He then filed another successive post-conviction motion, on June 14, 2017, seeking relief under *Hurst v. Florida*, __ U.S. __, 136 S. Ct. 616 (2016). The trial court denied Bowles' *Hurst* claim on August 21, 2017, and the Florida Supreme Court affirmed the trial court's denial of relief on January 29, 2018, in *Bowles v. State*, 235 So. 3d 235 (Fla. 2018). The United States Supreme Court denied Bowles' petition for writ of certiorari on October 1, 2018. *Bowles v. Florida*, __ U.S. __, 139 S. Ct. 157 (2018) (Mem).

During the pendency of Bowles' *Hurst* litigation, Bowles filed another successive post-conviction motion in the trial court on October 19, 2017, amended on March 13, 2019, asserting a claim of intellectual disability under *Hall v. Florida*, 572 U.S. 701 (2014). That motion is presently pending before the trial court.

The record has been reviewed and there are no stays of execution issued by any court of competent jurisdiction in this cause. Based upon the above-referenced summary of litigation affirming the judgment and sentence of death imposed for first-degree murder, the record is legally sufficient to support the issuance of a death warrant.

Sincerely,



Ashley Moody
Attorney General

DEATH WARRANT

STATE OF FLORIDA

WHEREAS, GARY RAY BOWLES, on or about the 16th day of November, 1994, murdered Walter J. Hinton; and

WHEREAS, GARY RAY BOWLES, on the 17th day of May, 1996, pleaded guilty to the crime of first degree murder, and on the 7th day of September, 1999, was sentenced to death for the murder of Walter J. Hinton; and

WHEREAS, on the 11th day of October, 2001, the Supreme Court of Florida affirmed the death sentence of GARY RAY BOWLES; and

WHEREAS, on the 14th day of February, 2008, the Supreme Court of Florida affirmed the trial court order denying GARY RAY BOWLES's Petition for Writ of Habeas Corpus, and on the 29th day of January, 2018 affirmed the trial court order denying his Motion for Collateral Relief; and

WHEREAS, on the 23rd day of December, 2009, the United States District Court for the Middle District of Florida denied GARY RAY BOWLES's federal Petition for Writ of Habeas Corpus, and the United States Court of Appeals for the Eleventh Circuit affirmed the decision of the District Court on the 18th day of June, 2010; and

WHEREAS, it is anticipated that by the date set by this warrant, all further postconviction motions and petitions filed by GARY RAY BOWLES will have been denied, and affirmed on appeal; and

WHEREAS, executive clemency for GARY RAY BOWLES as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

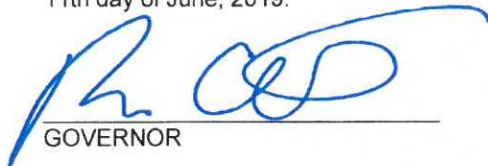
WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RON DESANTIS, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of

Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon GARY RAY BOWLES in accord with the provisions of the Laws of the State of Florida.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capital, this 11th day of June, 2019.


GOVERNOR

ATTEST:


SECRETARY OF STATE

FILED
2019 JUN 11 PM 4:31
TALLAHASSEE, FLORIDA

NOTE: PORTIONS OF THE DEPARTMENT OF CORRECTIONS INMATE RECORDS ARE CONFIDENTIAL, AS STATED IN FLORIDA STATUTE 945.10(1). FLORIDA STATUTE 945.10(2) PROHIBITS ACCESS TO INMATE RECORDS BY ANY INMATE. COPIES OF ANY PORTION OF THIS PACKET OR RELEASE OF ANY INFORMATION CONTAINED THEREIN MUST BE AUTHORIZED BY THE DEPARTMENT OF CORRECTIONS.

CAPITAL PUNISHMENT CASE PACKETS ARE CONFIDENTIAL BY RULE 16, RULES OF EXECUTIVE CLEMENCY OF FLORIDA. ADDITIONALLY, THE PACKET MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL OR EXEMPT FROM PUBLIC RELEASE BY SECTION 119.07, FLORIDA STATUTES. THERE ARE ALSO OTHER FLORIDA LAWS WHICH PROVIDE FOR CONFIDENTIAL OR EXEMPTIONS THAT MAY APPLY TO CERTAIN SPECIFIC INFORMATION CONTAINED IN THE PACKET.

**CERTIFIED COPY OF JUDGMENT, SENTENCE
AND
SENTENCING ORDER**

**Capital Punishment Case
Bowles, Gary Ray
DC# 086158 EC# D200335**

Probation Violator

Community Control Violator

Retrial

Resentence

In the Circuit Court, Fourth Judicial Circuit,

in and for Duval County, Florida

Division CR-A

Case Number 94- 12188-CF-A

Book 8433 Pg 1892

FILED

MAY 17 1996

Henry W. Cook
CLERK CIRCUIT COURT

State of Florida

GARY RAY BOWLES

Defendant

THE SENTENCE OF 5/17/96 IS SET ASIDE AND
VACATED PER MANDATE OF 8/27/98

JUDGMENT

The defendant, GARY RAY BOWLES, being personally before this court
represented by White B de la Beonda, the attorney of record, and the state
represented by _____, and having

☒ been tried and found guilty by jury/by court of the following crime(s)

☒ entered a plea of guilty to the following crime(s)

☐ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
1	Murder In The First Degree	782.04(1)(A)			Capital

Bk: 8433
Pg: 1892 - 1895
Doc# 95189810
Filed & Recorded
05/10/96
03:25:11 P.M.
HENRY W. COOK
CLERK CIRCUIT COURT
DUVAL COUNTY, FL
REC. .00

☒ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED that
the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

☐ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses
relating to sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800) the defendant shall
be required to submit blood specimens.

☐ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

RECORDED TO REFLECT NEW SENTENCE PAGES 3 THROUGH 20.

State of Florida
v.

GARY RAY BOWLES

Defendant

Case Number 94- 12188-CF-A

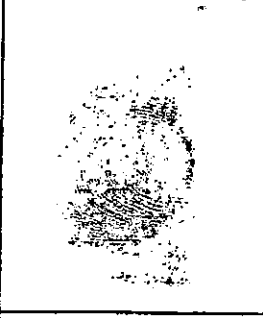
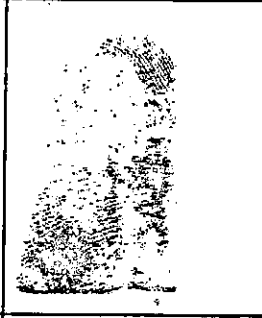
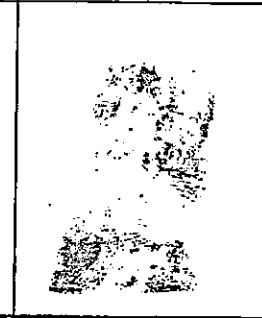
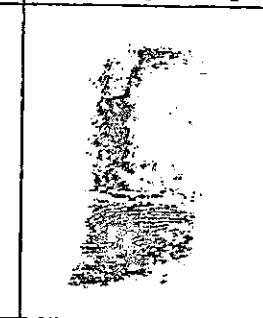
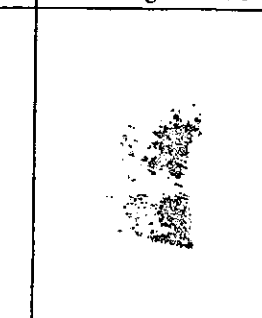

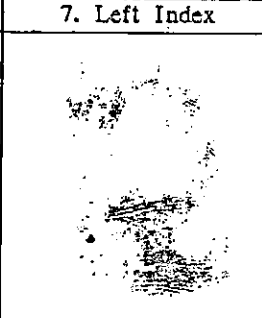
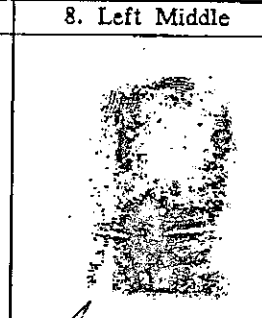
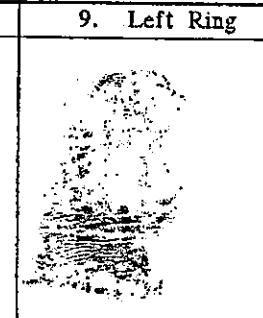
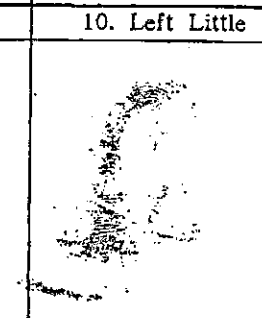
Book 8433 Pg 1893

Imposition of Sentence _____
Stayed and Withheld
(Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on probation/community control for a period of _____ under the supervision of the Department of Corrections (conditions of probation/community control set forth in separate order.)

DOC# 96189810

FINGERPRINTS OF DEFENDANT

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

Fingerprints taken by: _____

L. R. FORDEN 9/68
Name

BALIFF

Title

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

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 17 day of MAY, 1996.

RE-RECORD

DOC# 99225426

Judge

101

Page 2

of 50

Defendant GARY RAY BOWLES

Case Number 94- 12188-CF-A

OHTS Number 0006122014

SENTENCE

(As to Count 1)

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

(Check one if applicable.)

— and the court having on _____ (date) deferred imposition of sentence until this date.

☒ and the court having previously entered a judgment in this case on 5-17-96 (date) now resentsences the defendant

— and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court That:

— The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes plus \$ _____ as the 5% surcharge required by 938.04, Florida Statutes.

☒ The defendant is hereby committed to the custody of the Department of Corrections.

— The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.

— The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (Check one; unmarked sections are inapplicable):

— For a term of natural life.

☒ For a term of Death.

— Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

— Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

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

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

OTHER PROVISIONS

Retention of Jurisdiction

— The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes.

Jail Credit

— It is further ordered that the defendant shall be allowed a total of 654 days as credit for time incarcerated before imposition of this sentence.

Prison Credit

☒ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Consecutive/ Concurrent As To Other Counts

— It is further ordered that the sentence imposed for this count shall run (check one) _____ consecutive to _____ concurrent with the sentence set forth in count _____ of this case.

Defendant GARY RAY BOWLESCase Number 94- 12188-CF-A**OTHER PROVISIONS**

Consecutive/
Concurrent
As To Other
Convictions

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

 any active sentence being served.

 specific sentences: _____

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

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

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at Jacksonville, Duval County, Florida, this 7
day of Sep, 19 99.


Judge

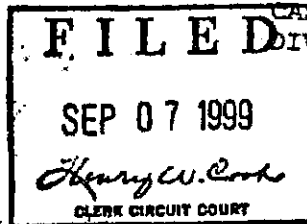
Book 9408 Pg 784

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

STATE OF FLORIDA

vs.

GARY RAY BOWLES



CASE NO: 94-12188-CF
DIVISION: CR-A



SENTENCING ORDER

GARY RAY BOWLES is before the Court for sentencing having pleaded guilty on May 17, 1996, to the crime of Murder in the First Degree. The crime was committed on or about November 16, 1994. On May 25, 1999, a jury was selected for the penalty phase and from May 25, 1999 through May 26, 1999, evidence was heard related to aggravating and mitigating factors. On May 27, 1999, the jury returned a 12-0 recommendation that the Defendant be sentenced to Death for the murder of Walter Jamel Hinton. On June 24, 1999, a second sentencing hearing was afforded the Defendant to present evidence.

The Court has considered the evidence presented in the penalty phase and sentencing hearing, has had the benefit of argument and memoranda from the parties, and now weighs the statutory aggravating factors and the mitigating factors as required by law.

1. The Defendant has been previously convicted of another capital felony or of a felony involving the use or threat of violence to some person.

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The Defendant has been previously convicted of two other capital felonies and of five crimes of violence against persons.

A. Sexual Battery and Aggravated Battery Convictions in Hillsborough County, Florida.

On September 27, 1982, in Hillsborough County, Florida, the Defendant was convicted of Sexual Battery and Aggravated Battery. These offenses involved an extremely high degree of violence. Corporal Jan Edenfield of the Hillsborough County Sheriff's Office testified that the Defendant between the dates of June 3, 1982 and June 4, 1982, beat and raped his girlfriend. The victim was brutally attacked in the motel room which they shared. She suffered hematomas, contusions to her head, face, neck, and chest, as well as bites to her breasts. Lacerations and cuts were also observed in her vagina and rectum.

On September 27, 1982, the Defendant was sentenced on each count to two consecutive three year prison terms.

B. Robbery Conviction in Volusia County, Florida.

On July 18, 1991, the Defendant was convicted in Volusia County, Florida of Unarmed Robbery. This offense involved a small amount of violence. In this crime, the Defendant pushed a woman down and stole her purse.

C. First Degree Murder, Armed Robbery and Burglary of a Dwelling With a Battery in Volusia County, Florida.

On March 15, 1994, the Defendant robbed and killed John Roberts while burglarizing his home. The facts of this case are

eerily similar to the facts of the instant case. The victim had permitted the Defendant to move into his home a few days prior to the murder. Roberts became angry with the Defendant when he learned that the Defendant had made long distance phone calls to a lady friend. The Defendant became angered when Mr. Roberts confronted him and the lady friend about it. One day, the Defendant entered the home and approached the victim from behind while he was sitting on the sofa. He removed the lamp shade from a lamp and used the lamp to hit the victim over the head. A violent struggle ensued during which the Defendant strangled Mr. Roberts and stuffed a rag into his mouth. The Defendant emptied Mr. Roberts' pockets, took his credit cards, money, keys and wallet, and left the scene. Mr. Roberts sustained injuries caused by blunt trauma to his head and a fractured neck. Other wounds were also found.

On August 6, 1997, the Defendant was convicted of First Degree Murder and Armed Burglary of a Dwelling with a Battery and sentenced to life in prison.

D. First Degree Murder in Nassau County, Florida.

The Defendant on or between May 18, 1994, and May 19, 1994, murdered Albert Morris. Mr. Morris had also befriended Mr. Bowles and allowed him to stay in his home. While at a bar the Defendant and Mr. Morris got into an argument and physical fight which continued at another bar. The Defendant struck Mr. Morris

over the head with a candy dish and a struggle ensued resulting in the victim being beaten and shot. The Defendant also strangled Mr. Morris and tied a towel over his mouth. Mr. Morris' injuries included head injuries, a shot to the chest, and a fractured hyoid bone.

On October 10, 1996, the Defendant was convicted of First Degree Murder and sentenced to life in prison.

The Defendant's prior convictions, excluding the robbery conviction in Volusia County in 1991, are marked by extreme violence. The State has proved this aggravating factor beyond any reasonable doubt.

2. The crime for which the Defendant is to be sentenced was committed while he was engaged or an accomplice in the commission of or an attempt to commit the crime of robbery.

Mr. Hinton was found inside his locked home on November 22, 1994. His sister and her then fiancé became concerned when he failed to respond to telephone calls and knocks on his door. After several days went by without word from Mr. Hinton, the fiancé broke into his locked mobile home and found his dead body wrapped in sheets and bedspreads.

Mr. Hinton's watch, car keys, automobile and stereo equipment were missing from the home. Stereo wires had been cut. A knife was on the floor next to where the stereo equipment had formerly been. His wallet was found on the floor next to the bed. The

Defendant was seen after the murder driving Mr. Hinton's car and wearing his watch.

Although the Defendant admits that property of Mr. Hinton was taken, he submits that it was an afterthought and not the motivation for the murder. He suggests that his subsequent abandonment of the automobile and watch proves that he was not motivated by pecuniary gain. However, his prior statements prove otherwise. In his statements to Agent Dennis Reagan of the FBI, the Defendant stated he expected to find money on the victim or in the trailer. When he didn't find any, he felt stuck and unable to flee because he had no money and no other place to go. This evidence establishes beyond a reasonable doubt that the murder was committed in the course of an attempted robbery or robbery. The fact that money was not there to be taken does not preclude the finding of this aggravating circumstance.

3. The Crime for Which the Defendant is to be Sentenced was Committed for Financial Gain.

This aggravating factor was proved beyond a reasonable doubt, but merges with the above aggravating factor and has been treated as one by the Court.

4. The Crime for which the Defendant is to be Sentenced was Especially Heinous, Atrocious or Cruel.

While Mr. Hinton was sleeping, the Defendant went outside the mobile home and lifted from the ground a 40-pound cement stepping stone and brought it inside. He placed the stepping stone

on a table in the living room area, sat down and thought for a few moments. He then entered Mr. Hinton's bedroom and dropped the cement stepping stone on Mr. Hinton's face. Mr. Hinton sustained a skull fracture which extended on the right side of his face across his cheek to the roots of his teeth. Despite the force of this blow, Mr. Hinton did not die nor lose complete consciousness. In an effort to save his life, Mr. Hinton struggled with the Defendant. The Medical Examiner observed on Mr. Hinton's body five (5) broken ribs, abrasions to the front and back of his right forearm, and more abrasions on the outside of his left knee. These findings corroborate the Defendant's statement that Mr. Hinton continued to struggle for his life after the Defendant dropped the 40-pound stone on his face.

The findings of the Medical Examiner also corroborate the Defendant's statement that he then choked Mr. Hinton with his hands. Mr. Hinton had hemorrhaging on the right side of his neck. The helix bone, a "U" shaped bone found at the top of the neck, and the hyoid bone located underneath his Adam's Apple were fractured. Toilet paper was stuffed down his throat and a rag was placed over the paper which protruded from his mouth. The Medical Examiner "logically assumed" that Mr. Hinton was strangled to death or to unconsciousness and these items were then stuffed down his throat blocking his airway and resulting in his death.

Book 9408 PG 790

The Defendant argues in his Memorandum that although the intensity of the struggle was great and resulted in suffering by Mr. Hinton, there is no evidence that the Defendant intended to do anything but to kill by whatever means were at hand. He further argues that he did not set out to strangle, choke, or beat Mr. Hinton to death. Lastly, he argues that he was intoxicated, which he suggests negates the finding that he intended to cause pain.

The Court finds that Mr. Bowles was, as he argues, prepared to take the life of Walter Hinton by any means available. Although this Court cannot determine if Mr. Bowles enjoyed the suffering of Walter Hinton, he was certainly indifferent and determined to take his life. Since the Defendant could not have known with certainty whether crushing Walter Hinton's face with a 40-pound stepping stone would take his life, he was prepared to inflict further suffering. This is just what he had been prepared to do only months earlier when he took the life of Mr. Roberts in Volusia County.

Finally, the fact that Mr. Hinton was likely unconscious when the toilet paper and rag were stuffed down his throat, does not bar a finding that the Defendant's conduct was consciousnessless, pitiless, heinous, atrocious and cruel. Without a struggle, the Defendant's efforts to strangle Mr. Hinton would have, according to the medical examiner, taken at least 30 to 45 seconds before a loss of consciousness. With a struggle, Mr. Hinton would have endured the

fright, pain, and fear of being strangled for an even longer period.

The Court finds beyond a reasonable doubt that this aggravator has been proved.

5. The Capital Felony was Committed in a Cold, Calculated and Premeditated Manner Without any Pretense of Moral or Legal Justification.

The Defendant does not suggest that this murder was committed out of some "moral or legal justification." He argues that it was not done in a cold or calculated manner exhibiting the degree of heightened premeditation necessary for this Court to find this aggravating circumstance.

The Defendant admitted that he went outside the mobile home, picked up a 40-pound concrete stepping stone, brought it inside and sat it on a table. He then sat down and thought for a few moments. Then, with deliberate ruthlessness, walked into Mr. Hinton's bedroom and crushed his face with the stone. No evidence exists that the act was prompted by emotional frenzy, panic, or a fit of rage. The Defendant selected the opportune time, while Mr. Hinton was sleeping, to overpower him and take his life.

The State argues that the Defendant was angry that Mr. Hinton had reneged on his agreement to allow the Defendant to stay in his home in exchange for the help the Defendant provided Mr. Hinton in moving some furniture from Georgia to Jacksonville. The State then suggests that the murder of John Roberts on March 15, 1994, in

Volusia County, and the murder of Albert Morris on or about May 18 or 19, 1994, in Nassau County, "help in showing why this murder was cold, calculated and premeditated." The State argues that either the Defendant wanted something his victims had or was upset at the way he was treated by each victim. The State suggests the killings were revenge for the way each victim had treated the Defendant.

The murder of Mr. Roberts, committed just months earlier in a manner strikingly similar to the way Mr. Hinton's life was taken, convinces the Court that the Defendant devised his plan to take the life of Walter Hinton no later than from the moment he stepped outside the mobile home to retrieve the stepping stone which he later used to crush Mr. Hinton's face. This was a cold and calculated act done with heightened premeditation.

In reaching this conclusion, the Court finds that the Defendant was partly motivated to take money and property of Mr. Hinton; and also motivated by his anger at Mr. Hinton for earlier removing him from his home. The similarity of this murder and the murder of Mr. Roberts in Volusia county eliminates any doubt that the Defendant's intentions were to kill and not merely to injure when he retrieved the stone. The point in time when he went to get the stone would be the latest point in time that he planned the death of Walter Hinton. As he argues in his Sentencing Memorandum, he thought the forty pound stone would achieve his purpose. When it did not, he was prepared, as he suggests, to take Mr. Hinton's

life by "whatever means were at hand." As the State argues, this plan may have been devised earlier. However, the court concludes that the period of time from retrieval of the stone until attack was sufficient to sustain the requirement of heightened premeditation, and finds this aggravating factor has been proved beyond a reasonable doubt.

7. The Crime for which the Defendant is to be Sentenced was Committed while he was on Felony Probation.

The Defendant was on probation for the robbery he committed in Volusia County. He was sentenced on July 18, 1991, to four (4) years in prison followed by six (6) years probation. The Court finds beyond a reasonable doubt that there are five¹ separate aggravating factors.

The Court gives tremendous weight to the Defendant's previous convictions of other capital felonies and felonies involving the use of threat or violence to some person. These convictions establish beyond a reasonable doubt that this Defendant possesses an extraordinary propensity for killing and violence. The Court gives great weight to the fact that this murder was heinous, atrocious and cruel; and cold, calculating and premeditated. The Court gives significant weight to its finding that this murder was motivated by pecuniary gain. The Court has given some weight to

¹The Court finds that two aggravators merge, to-wit: The offense was committed while the Defendant was engaged in the commission of or an attempt the crime of robbery and the offense was committed for pecuniary gain.

the fact that the Defendant was on probation for strong armed robbery at the time of this offense. None of the other aggravating factors enumerated by statute is applicable to this case and none other was considered by this Court. Nothing except as previously indicated was considered as aggravation.

B. Statutory and Other Mitigating Factors.

The Defendant asserts the following as statutory or other mitigating factors reasonably established by the greater weight of the evidence:

1. The Defendant suffered from extreme emotional disturbance at the time of the murder.

The Defendant asserts that evidence of his drinking and abusive childhood requires the finding that at the time of Mr. Hinton's murder, he was suffering from an extreme emotional disturbance. His theory, unsupported by expert testimony, is that the rage within him was unleashed by the use of alcohol and drugs. He argues that the 1982 prior violent felony in which he raped and battered his girlfriend, and Mr. Hinton's murder, can only be explained in the context of an underlying emotional disturbance.

The Court finds that the Defendant is an alcoholic and has been using drugs and alcohol since his youth, and that many members of his family and extended family are alcoholics. However, this evidence does not support a finding of this mitigator unless being an alcoholic, standing alone, meets the definition of an extreme emotional disturbance. If so, then the Court would find

this statutory mitigator to have been met by the evidence, but entitled to little weight.

2. The capacity of the Defendant to appreciate the criminality of his acts, was, at the time of the homicide, substantially diminished.

The Defendant contends that his level of intoxication at the time of the murder substantially reduced his ability to appreciate the criminality of his conduct. On the day of the murder he had been drinking heavily. He drank six beers on his way to the train station with Mr. Hinton and Mr. Smith. He also smoked marijuana. When he returned to Mr. Hinton's home, he continued to drink. Although the Court finds that the Defendant was under the influence of drugs and alcohol at the time of the murder, the greater weight of the evidence does not sustain a finding that his ability to appreciate the criminality of his acts was substantially diminished.

To commit this crime, the Defendant waited for Mr. Hinton to fall asleep. He needed a hard object to overpower Mr. Hinton. He thought of a stepping stone outside, which was embedded in the ground. He had to lift this heavy object and bring it inside. He then had to enter quietly into Mr. Hinton's room. He had to aim the stone so it fell squarely on Mr. Hinton's head. He had to fend-off Mr. Hinton's efforts to save his life. He was able to think, act, and react in order to commit this murder, despite being under the influence of drugs and alcohol. When he was arrested

approximately six days later, he was able to relate with clarity and detail how he killed Mr. Hinton. His only omission was how he stuffed toilet paper down Mr. Hinton's throat. He was also able to tell of events leading up to, and following, the murder. These facts prove to the Court that although he had ingested a substantial amount of alcohol and smoked marijuana, his ability to appreciate the criminality of his conduct was not substantially diminished.

The Defendant also argues that there was nothing in his "post-murder actions" to indicate that he was acting in a normal, sober manner. After the killing, he was able to drive a car, purchase additional liquor, pick-up a woman on the beach and bring her back to the mobile home where he committed the murder. He was also sufficiently alert to keep her from the room in which Mr. Hinton's dead body lay covered in sheets. These events do not describe an individual whose ability to function and appreciate the criminality of his acts were substantially diminished. On the contrary, this evidence strongly suggests that Mr. Bowles was minimally affected by alcohol and drugs, despite his extensive use. The Court has given no weight to this factor.

3. Background and/or Personal History of the Defendant.

The Defendant enjoyed a good childhood until age six or seven. However, by age ten he was sniffing glue and huffing paint. The discipline utilized by both his stepfathers was abusive.

Beatings were administered on occasion with belts and fists. His mother testified that on occasion when she returned from work, she observed him bruised from the whippings. His mother was the victim of severe abuse which was witnessed by the defendant and his siblings.

The Defendant further asserts as mitigation the fact that he never had a positive male role model in his life. He was abandoned by his mother, who chose an abusive stepfather over him. He did not receive parental encouragement to perform in school. He did not complete junior high school and did not receive the necessary educational tools to function well as a productive member of society. He also asserts his intoxication at the time of the offense, and extensive alcoholic background, to support this element of mitigation.

The Defendant further submits that he provided testimony on behalf of the State of Florida in a case where a man was raped in a jail in Tampa, Florida. He further asserts that he cooperated by confessing to the instant crime and other crimes, and by voluntarily pleading guilty in the instant case and in two other homicide cases.

The Court has carefully considered the evidence regarding the Defendant's abusive childhood and the severe abuse endured by his mother which he witnessed as a child. Those factors are given significant weight. The Court has also given some weight to the

Defendant's history of alcoholism and the absence of a true father figure in his home during his childhood. The Court has given little weight to the Defendant's failure to complete junior high school and lack of an education; or his cooperation in this and other cases; or his voluntary plea of guilty to this and other murders.

The Court has also given little weight to the defendant's use of intoxicants and drugs at the time of the murder. The frequency with which the Defendant has used this as an explanation to law enforcement officers, when confronted about his violent actions, causes the court to give this factor less weight as mitigation and more weight as a convenient, but poor excuse. The Court has not given any weight to the circumstances which caused the Defendant to leave home or his circumstances after he left home. As to the latter, no evidence was presented.

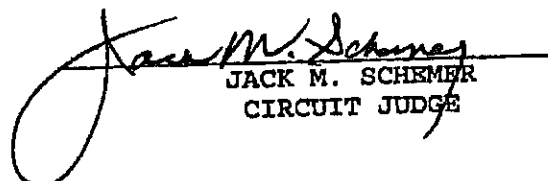
After carefully considering and weighing the aggravating and mitigating circumstances found to exist in this case, and mindful that human life is at stake in the balance, the Court finds that the aggravating circumstances proved beyond a reasonable doubt overwhelmingly outweigh the mitigating circumstances reasonably established by the evidence.

Accordingly, it is ORDERED AND ADJUDGED that the Defendant, GARY RAY BOWLES, is hereby sentenced to death for the murder of Walter Jamel Hinton. The Defendant is hereby committed to the

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custody of the Department of Corrections of the State of Florida
for execution of this sentence as provided by law. May God have
mercy on his soul.

DONE AND ORDERED in Chambers at Jacksonville, Duval County,
Florida, this 7th day of September, 1999.


JACK M. SCHERER
CIRCUIT JUDGE

Copies to:

Bernardo de la Rionda
Assistant State Attorney

William P. White
Chief Assistant
Public Defender's Office

RE-RECORD

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HENRY M. COOK
CLERK CIRCUIT COURT
DUVAL COUNTY, FL
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