IN THE SUPREME COURT OF FLORIDA

CASE NOS. SC 18-340; 18-1174

JOHNNY MACK SKETO CALHOUN,

Appellant

v.

STATE OF FLORIDA,

Appellee.

APPELLANT'S MOTION TO DIRECT THE CIRCUIT COURT TO STAY HIS SUCCESSIVE 3.851 PROCEEDING UNTIL COMPLETION OF THIS APPEAL, OR, IN THE ALTERNATIVE, TO RELINQUISH JURISDICTION

Appellant JOHNNY MACK SKETO CALHOUN respectfully requests that this Court direct the circuit court to hold his Successive 3.851 proceeding in abeyance until this appeal is final. *See Tompkins v. State*, 894 So.2d 857, 859-60 (Fla. 2005). In the alternative, Mr. Calhoun asks this Court to relinquish jurisdiction to the circuit court. As grounds in support, Mr. Calhoun states:

1. Mr. Calhoun is an indigent defendant under sentence of death at Union Correctional Institution in Raiford, Florida.

2. On September 25, 2015, Mr. Calhoun filed his initial Motion to Vacate Judgments of Conviction and Sentence pursuant to Fla. R. Crim. P. 3.851. The trial court granted Mr. Calhoun's claim for *Hurst* relief prior to the evidentiary hearing.

3. After the evidentiary hearing on September 15, 19 and 20, 2017, the trial court denied relief on all guilt phase claims. Mr. Calhoun's appeal of the denial of his 3.851 motion and his petition for writ of habeas corpus are pending before this Court.

4. Prior to the evidentiary hearing, Mr. Calhoun filed a Motion to Amend to add a claim of newly discovered evidence based on incriminating statements by Doug Mixon to Robert Vermillion. The trial court denied Mr. Calhoun's Motion to Amend but allowed him to proffer Mr. Vermillion's testimony at the evidentiary hearing. Although the trial court denied Mr. Calhoun's Motion to Amend to formally add the claim to his postconviction case, the court analyzed the claim on the merits and denied relief.

5. Mr. Calhoun filed a subsequent Motion to Amend and Reopen the Evidentiary Hearing on November 1, 2017, based on the newly discovered evidence of Doug Mixon's incriminating statements to Keith Ellis. The trial court denied Mr. Calhoun's motion on November 2, 2017.

6. Due to the peculiar posture Mr. Calhoun found himself in regarding his newly discovered evidence claims of Doug Mixon's statements to Robert Vermillion

and Keith Ellis, he filed a Successive Motion for Postconviction Relief in Light of Newly Discovered Evidence on August 17, 2018.

4. In order to preserve his right to the ultimate adjudication of his newly discovered evidence claims on the merits, Mr. Calhoun makes the present motion, which contains a request that this Court relinquish jurisdiction to the circuit court.

5. However, in this case the sound use of this Court's discretionary authority under *Tompkins v. State*, 894 So.2d 857, 859-60 (Fla. 2005) would be to decline to relinquish jurisdiction. Rather, in the interests of justice and judicial economy, this Court should decide the instant appeal first. If Mr. Calhoun prevails either before this Court or before the United States Supreme Court after a Petition for Writ of Certiorari, his case will be remanded to the circuit court for a new trial. At that time, Mr. Calhoun's jury, will hear his case and determine his innocence.

6. As such, Mr. Calhoun requests that this Court direct the circuit court to stay Mr. Calhoun's Successive 3.851 proceeding until the decision in this appeal becomes final. *See Tompkins v. State*, 894 So. 2d 857, 859–60 (Fla. 2005) ("[I]f an appeal is pending in a death penalty case and this Court denies a motion to relinquish jurisdiction for the trial court to consider a new claim, the trial court should hold any successive postconviction motion in abeyance until the appeal process is completed.").

WHEREFORE, Mr. Calhoun respectfully requests that this Court direct the circuit court to stay his Successive 3.851 proceeding, or in the alternative, issue an Order relinquishing jurisdiction, allowing a significant period of relinquishment so that the discovery process can commence and the evidentiary hearing can be completed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically served upon Lisa Hopkins, Assistant Attorney General, (lisa.hopkins@myfloridalegal.com) and Brandon Young, Assistant State Attorney, (brandon.young@sa14.fl.gov) on the 17st day of August, 2018.

Respectfully submitted,

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ATTACHMENT A

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR HOLMES COUNTY, FLORIDA

STATE OF FLORIDA,

v. CASE NO.: 2011-CF-11A

JOHNNY MACK SKETO CALHOUN,

Defendant.
_____/

SUCCESSIVE 3.851 MOTION FOR POSTCONVICTION RELIEF IN LIGHT OF NEWLY DISCOVERED EVIDENCE

Defendant, **JOHNNY MACK SKETO CALHOUN**, moves for postconviction relief from his sentence of death in light of newly discovered evidence under Fla. R. Crim. P. 3.851(d)(2)(A).

CITATIONS TO THE RECORD

The following symbols will be used to designate references to the record: "T" refers to the transcript of trial proceedings; "R" refers to the record on direct appeal to the Florida Supreme Court; "PCR" refers to the postconviction record on appeal to the Florida Supreme Court from the denial of Mr. Calhoun's 3.851 motion; "EH" refers to the transcript of the evidentiary hearing held September 15, 19, and 20, 2017. All other references will be self-explanatory.

PROCEDURAL HISTORY

The Honorable Christopher N. Patterson, Judge for the Circuit Court of the Fourteenth Judicial Circuit in and for Holmes County, Florida, entered the judgments of conviction and sentence at issue. Mr. Calhoun was indicted on February 18, 2011 for first-degree murder and kidnapping. He was subsequently tried and convicted of all counts. (R. 960). A penalty phase was conducted, and the jury recommended a death sentence by a 9 to 3 vote. (T. 1373). On May 18, 2012, the trial court imposed a death sentence. (T. 1308). The trial court found the following

aggravators: (1) the capital felony was cold, calculated and premeditated (CCP)/very great weight; (2) the capital felony was committed in the commission of a kidnapping/great weight; and (3) the capital felony was committed for the purpose of avoiding arrest/very great weight.

The court found the following mitigating circumstances: (1) Mr. Calhoun had no significant prior criminal history/significant weight; (2) Mr. Calhoun had good jail conduct pending and during trial/little weight; (3) Mr. Calhoun was capable of loving relationships/little weight; (4) Mr. Calhoun's childhood history/little weight; and (5) Mr. Calhoun posed no future threat/minimal weight. The jury's sentencing recommendation was given great weight. The trial court's sentencing order is attached as ATTACHMENT "A".

On direct appeal, the Florida Supreme Court affirmed Mr. Calhoun's convictions and sentences. *Calhoun v. State*, 128 So. 3d 350 (Fla. 2013).[1] The United States Supreme Court denied certiorari. *Calhoun v. Florida*, 135 S. Ct. 236 (2014).

On September 25, 2015, Mr. Calhoun filed his initial Motion to Vacate Judgments of Conviction and Sentence pursuant to Fla. R. Crim. P. 3.851. (PCR. 460). He filed six motions to amend. The court granted Mr. Calhoun's claim for *Hurst* relief. After an evidentiary hearing, the

[1] Mr. Calhoun raised the following issues on direct appeal: (1) the trial court erred in refusing to allow the defense to present Mr. Calhoun's statement to the police under the rule of completeness, after the State introduced selected parts of the statement, on the grounds that Mr. Calhoun's statement was exculpatory; (2) the trial court erred in finding and weighing two aggravating circumstances not proven beyond a reasonable doubt; and (3) the death penalty is unconstitutionally imposed because Florida's sentencing procedures are unconstitutional under the Sixth Amendment pursuant to *Ring v. Arizona*. As to issue 1, the Court found that any error of the trial court in excluding statements Mr. Calhoun made to law enforcement, which Mr. Calhoun sought to have admitted under the rule of completeness, was harmless. As to issue 2, the Court found the evidence did not support the avoid arrest aggravator, but the error was harmless because the trial court correctly found the aggravators of CCP and kidnapping and Mr. Calhoun presented limited mitigation. Issue 3 was denied because the Court declined to revisit its decisions in *Bottoson* and *King* on the *Ring* issue.

trial court denied relief on all remaining claims.[2] Mr. Calhoun's appeal of the denial of his 3.851 motion and his petition for writ of habeas corpus are pending in the Florida Supreme Court.[3] (*See* SC18-340 and SC18-1174).

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[2] Mr. Calhoun raised the following claims in postconviction: (1) he was denied his right to a fair trial and due process when the State introduced improper victim impact evidence in the guilt phase of trial; (2) trial counsel was ineffective during jury selection; (3) trial counsel was ineffective at the guilt phase of trial; (4) he was denied his right to a fair trial and due process due to improper prosecutorial misconduct during the guilt phase of trial; (5) trial counsel was ineffective for failing to object to two of the aggravating circumstances argued by the State; (6) trial counsel was ineffective at the penalty phase of trial; (7) he was denied his rights to due process and equal protection due to counsel's failure to obtain a competent mental health evaluation in violation of *Ake v. Oklahoma*; (8) he was denied his right to a fair trial and an impartial jury due to juror misconduct between the guilt and penalty phases of trial; (9) trial counsel was ineffective due to her failure to investigate juror misconduct that occurred between the guilt and penalty phases of trial; (10) trial counsel was ineffective for completely disregarding the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases; (11) cumulative error; (12) lethal injection is cruel and/or unusual punishment; (13) Mr. Calhoun's death sentence was obtained unconstitutionally in light of *Hurst v. Florida*; (14) Mr. Calhoun was denied his fundamental right to counsel and a fair trial due to counsel's conflict of interest; (15) Mr. Calhoun was denied his right to due process when the State withheld evidence in violation of *Brady v. Maryland*; (16) newly discovered evidence of Natasha Simmons' statement about a suspicious encounter with Doug Mixon during the time surrounding the victim's murder establishes that Mr. Calhoun's conviction and sentence were obtained in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; (17) newly discovered evidence of Doug Mixon's confession to Robert Vermillion establishes that Mr. Calhoun's conviction and sentence were obtained in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; and (18) newly discovered evidence of Doug Mixon's confession to Keith Ellis establishes that Mr. Calhoun's conviction and sentence were obtained in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

[3] Mr. Calhoun raised the following issues in his current appeal of the denial of his 3.851 motion: (1) Mr. Calhoun was deprived of his fundamental right to effective counsel and a fair trial due to counsel's active conflict of interest; (2) newly discovered evidence regarding Doug Mixon so weakens the case against Mr. Calhoun that it creates a reasonable doubt as to his guilt; (3) the trial was afflicted with *Brady v. Maryland* violations; (4) ineffective assistance of trial counsel; (5) the trial court abused its discretion by not allowing Mr. Calhoun to amend his 3.851 motion; (6) the State violated Mr. Calhoun's due process rights by presenting misleading evidence and advancing false and misleading argument in contravention of *Giglio*/*Napue*; and (7) the trial court violated Mr. Calhoun's right to due process when it adopted the State's pleadings in lieu of conducting an independent and impartial analysis.

Mr. Calhoun raised the following issues in his habeas petition pending in the Florida Supreme Court: (1) ineffective assistance of appellate counsel for failing to challenge the trial

This successive motion for postconviction relief is predicated entirely on newly discovered evidence. Mr. Calhoun's attempts to raise both claims in his initial postconviction motion were denied by the trial court.

Specifically, on September 1, 2017, Mr. Calhoun filed a Motion to Amend to add a claim of newly discovered evidence based on the incriminating statements by Doug Mixon to Robert Vermillion (hereinafter Claim 1). The trial court denied Mr. Calhoun's Motion to Amend but allowed him to proffer Mr. Vermillion's testimony at the evidentiary hearing. (EH 6). The trial court analyzed the claim on the merits and denied relief. The denial of Mr. Calhoun's Motion to Amend and the denial of relief on the merits are both pending on appeal to the Florida Supreme Court. However, due to the peculiar posture Mr. Calhoun finds himself in regarding Claim 1, he finds it prudent to file the newly discovered evidence claim in this successive motion for postconviction relief to preserve his rights to full state and federal appellate review.

As to newly discovered evidence of Doug Mixon's incriminating statements to Keith Ellis detailed in Claim 2, Mr. Calhoun filed a subsequent Motion to Amend and Reopen the Evidentiary Hearing on November 1, 2017. The trial court denied Mr. Calhoun's Motion to Amend on November 2, 2017. The denial of the Motion to Amend is on appeal to the Florida Supreme Court. However, in order to preserve his rights to full state and federal appellate review, Mr. Calhoun finds it prudent to raise this issue in a successive motion for postconviction relief.[4]

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court's exclusion of Mr. Calhoun's statement related to where and when he was in the woods with law enforcement; (2) ineffective assistance of appellate counsel for failing to raise the flawed jury instruction regarding venue and jurisdiction; and (3) ineffective assistance of appellate counsel for failing to raise the issue of improper introduction of victim impact evidence during the guilt phase.

[4] Mr. Calhoun has filed a Motion to Direct the Circuit Court to Stay His Successive 3.851 Proceeding Until Completion of This Appeal, Or, in the Alternative, To Relinquish Jurisdiction in the Florida Supreme Court. (ATTACHMENT "B"). *See Tompkins v. State*, 894 So. 2d 857, 859–60 (Fla. 2005) ("[I]f an appeal is pending in a death penalty case and this Court denies a motion to

GROUNDS FOR POSTCONVICTION RELIEF

By his motion for Rule 3.851 relief, Mr. Calhoun asserts that his conviction and sentence of death were obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution for the reasons set forth below.

STANDARD FOR NEWLY DISCOVERED EVIDENCE CLAIMS

Two requirements must be met in order to set aside a conviction or sentence because of newly discovered evidence. *See Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 2014), *citing Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*). First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or his counsel could not have known of it by the use of due diligence. Second, the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial. *Id*. "Newly discovered evidence satisfies the second prong of the *Jones II* test if it 'weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.'" *Id. citing Jones II*, 709 So. 2d 526.

Pursuant to the standard set forth in *Jones II*, "the postconviction court must consider the effect of the newly discovered evidence, in additional to all of the admissible evidence that could be introduced at a new trial." *Hildwin*, 141 So. 2d at 1184, *citing Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). "In determining the impact of the newly discovered evidence, the court must conduct a cumulative analysis of all the evidence so there is a 'total picture' of the case and 'all the circumstances of the case'." *Id*.; *see also Lightbourne v. State*, 742 So. 2d 238, 247 (Fla.

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relinquish jurisdiction for the trial court to consider a new claim, the trial court should hold any successive postconviction motion in abeyance until the appeal process is completed.").

1990). This cumulative analysis includes whether the evidence goes to the merits of the case, whether it constitutes impeachment evidence, whether it is cumulative to other evidence in the case, whether the evidence is material and relevant, and whether any inconsistencies exist in this newly discovered evidence. *Jones II*, 709 So. 2d at 521.

"A postconviction court must even consider testimony that was previously excluded as procedurally barred or presented in another postconviction proceeding in determining if there is a probability of an acquittal." *Swafford*, 125 So. 3d at 775-76; *Lightbourne*, 742 So. 2d 247; *see also Roberts v. State*, 840 So. 2d 962, 972 (Fla. 2002) (holding that upon remand, if the trial court determined that the testimony in a newly discovered evidence claim was reliable, the trial court was required to view that new evidence, as well as claims under *Brady v. Maryland*, 373 U.S. 83 (1963), that were previously rejected in a prior postconviction motion, because the evidence was equally accessible to the defense and there was no reasonable probability that the result of the trial would have been different had the evidence been disclosed).

The following witnesses will be available to testify under oath in support of Mr. Calhoun's claims: Jayson Shannon, Investigator, CCRC-North, 1004 Desoto Park Drive, Tallahassee, FL 32301, (850) 487-0927; Alice Copek, Copek Law, LLC, 517 East College Avenue, Tallahassee, FL 32301, (850) 445-4951; Kathleen Pafford, Public Defender's Office, 2nd Judicial Circuit, 301 S. Monroe Street, Suite 401, Tallahassee, FL 32301, (850) 606-1000; Robert Vermillion, 2006 Hwy 179, Bonifay, FL 32425; Charles Douglas Mixon, DOC No. Q31073, Pensacola Community Release Center, 3050 North L Street, Pensacola, FL 32501-1010; Keith Ellis, DOC No. 098905, Santa Rosa Annex, 4840 East Milton Road, Milton, Florida 32583-7914; A.J. Lombardin, (850) 228-2173; Pastor Larry Dean, 13760 NW Bailey Cemetary Road, Clarksville, FL 32430, (850) 209-2513; Anthony McGlamery, 1789 Stevenson Road, Bonifay, FL 32425; Linda Thames, 1465

Boston Road, Chipley, FL 32428, (850) 768-8222; Karon Matheny; 1442 Coleman Road, Hartford, AL 36344.

CLAIM 1

NEWLY DISCOVERED EVIDENCE OF DOUG MIXON'S CONFESSION TO ROBERT VERMILLION ESTABLISHES THAT MR. CALHOUN'S CONVICTION AND SENTENCE OF DEATH ARE UNCONSTITUTIONALLY UNRELIABLE IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND REQUIRE A NEW TRIAL.

This claim is evidenced by the following:

All factual allegations contained elsewhere within this motion and set forth Mr. Calhoun's previous motion to vacate, and all evidence presented by him during the previously conducted evidentiary hearing are incorporated herein by specific reference.

On August 29, 2017, A.J. Lombardin called CCRC-North and asked to speak with either Ms. Copek or Ms. Pafford. Both attorneys were out of the office, and Ms. Copek returned Mr. Lombardin's call on the morning of August 30, 2017. Mr. Lombardin informed counsel that he and a fellow minister, Larry Dean, had been ministering to inmates at the Holmes County Jail and learned information about Mr. Calhoun's case. Mr. Lombardin advised counsel to contact Mr. Dean for details. CCRC-North investigator Jayson Shannon met with Larry Dean on August 30, 2017. Mr. Dean told Mr. Shannon that he received information relevant to Mr. Calhoun's case from Anthony McGlamery and that Mr. McGlamery was willing to meet with Mr. Shannon. Prior to Mr. Shannon's meeting with Mr. Dean, no one on Mr. Calhoun's defense team had ever heard of Mr. McGlamery as a person who may have information relevant to Mr. Calhoun's case. On August 31, 2017, Mr. Shannon and Ms. Copek traveled to the Holmes County Jail. Mr. Shannon met with Mr. McGlamery, who told Mr. Shannon that he overheard the information from another inmate, Robert Vermillion. Prior to Mr. Shannon's conversation with Mr. McGlamery, no one on

Mr. Calhoun's defense team had ever heard of Mr. Vermillion as a person who may have information relevant to this this case. Immediately following Mr. Shannon's interview with Mr. McGlamery, Mr. Shannon and Ms. Copek met with Mr. Vermillion. He provided them with incriminating and material information regarding an alternate suspect in this case, Doug Mixon. He also signed an affidavit attesting to the truthfulness of the information he conveyed to Mr. Calhoun's defense team. (See ATTACHMENT "C").

Robert Vermillion testified at Mr. Calhoun's evidentiary hearing that he and Brandon Brown, the victim's husband, are cousins. (EH. 356). Mr. Vermillion and Mr. Brown grew up together, much like brothers. *Id*. Mr. Vermillion had gone to school with victim, and when she married Brandon, Mr. Vermillion considered her family. *Id*. Sometime after the victim was killed, Mr. Vermillion came to believe that Doug Mixon was the one responsible. (EH. 358).

During the summer of 2016, Kim Taylor, a woman living with Mr. Vermillion's aunt Linda Thames, became involved with Doug Mixon. (EH. 361). Ms. Taylor would often invite Mr. Mixon over to Ms. Thames' house. *Id*. Mr. Vermillion was adamant that he did not want Mr. Mixon at his aunt's house, but Aunt Linda told him to mind his own business. (EH. 362). For his aunt's sake, Mr. Vermillion tried to maintain civility with Mr. Mixon. *Id.*

One evening, Mr. Mixon divulged things about his past to Mr. Vermillion. (EH. 362). During the course of the conversation, Mr. Mixon said, "I know I've done a lot of things I'm not proud of" and asked Mr. Vermillion to forgive him. *Id*. Mr. Vermillion told Mr. Mixon that he could not forgive him for anything and directed him to seek forgiveness from Brandon Brown. *Id*.

Mr. Mixon then began to panic and became "hysterical." (EH. 364). He pulled a knife on Mr. Vermillion and accused him of inviting him to Ms. Thames' home in order to kill him. (EH. 362). In his panic, Mr. Mixon kicked out a window A/C unit and Ms. Thames and Ms. Taylor tried

to calm him down. (EH. 363). Mr. Vermillion believed Mr. Mixon was having a heart attack. *Id*. Mr. Vermillion called 911 and left his aunt's house. He observed an ambulance transport Mr. Mixon from the residence. (EH. 364). Mr. Mixon confirmed at the evidentiary hearing that he did in fact have a heart attack at Ms. Thames' house in July of 2016, that Mr. Vermillion was present, and that Mr. Mixon was taken from the house by ambulance. (EH. 310-11).

It is clear from the testimony itself that neither trial counsel nor Mr. Calhoun could have known of the confession by the use of due diligence, as Mr. Mixon's statements were not made until July 2016, well after the conclusion of Mr. Calhoun's trial. It is evident from the record that neither this Court, Mr. Calhoun, his defense team, nor the prosecution were aware of this information prior to the filing of this claim and it could not have been discovered through due diligence.

The nature of the newly discovered evidence of Doug Mixon's confession to Mr. Vermillion is such that it would probably produce an acquittal on retrial. The case against Mr. Calhoun was largely, if not entirely, circumstantial. There was no confession, no eyewitnesses, and no motive for Mr. Calhoun to kill the victim. Mr. Calhoun adamantly maintained his innocence and claimed someone else committed the crime. Trial counsel put on evidence in her case in chief of suspicious events occurring on the night of the victim's disappearance. Trial counsel went to great lengths to suggest that Brittany Mixon contaminated the crime scene and planted evidence. In her closing argument, trial counsel made a vague argument, without any evidentiary basis, that Brittany Mixon's father, Doug Mixon, may have been involved in the crime. (T. 1199).

The newly discovered evidence of Doug Mixon's confession to Mr. Vermillion independently implicates Mr. Mixon in the victim's murder and would have led the jury to the conclusion that there was not proof beyond a reasonable doubt of Mr. Calhoun's guilt. While this

is sufficient to satisfy *Jones II*, the Court must consider the effect of this newly discovered evidence on Mr. Calhoun's conviction in addition to all the of the admissible evidence that could be introduced at a new trial. The cumulative analysis of all the evidence must be conducted so there is a "total picture" of the case. *Hildwin* at 1184. This means the Court must consider Mr. Mixon's confession, in addition to the fact that he was always considered an alternative suspect whose alibi has been proven to be false and whose daughter was alleged to have planted evidence, as argued by trial counsel.[5]

Mr. Calhoun is entitled to an evidentiary hearing on this claim. The records and files in this case do not conclusively establish that he is entitled to no relief.

CLAIM 2

NEWLY DISCOVERED EVIDENCE OF DOUG MIXON'S CONFESSION TO KEITH ELLIS ESTABLISHES THAT MR. CALHOUN'S CONVICTION AND SENTENCE OF DEATH ARE UNCONSTITUTIONALLY UNRELIABLE IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND REQUIRE A NEW TRIAL.

This claim is evidenced by the following:

All factual allegations contained elsewhere within this motion and set forth in Mr. Calhoun's previous motion to vacate, and all evidence presented by him during the previously conducted evidentiary hearing are incorporated herein by specific reference.

On or about October 24, 2017, CCRC-North investigator Jayson Shannon received a telephone call from Karon Matheny, a nurse at Graceville Correctional Facility ("Graceville C.F."). Ms. Matheny advised Mr. Shannon that she had been told by inmate Keith Ellis at

[5] *See* Claim III(F) of Mr. Calhoun's 3.851 motion.

Graceville C.F. that Doug Mixon had made incriminating statements about his involvement in the victim's death.

Prior to Mr. Shannon's conversation with Ms. Matheny, no one on Mr. Calhoun's defense team had ever heard of Mr. Ellis as person who may have information relevant to his case. On October 30, 2017, Mr. Shannon traveled to Graceville C.F. and met with Mr. Ellis. Mr. Ellis provided him with incriminating and material information regarding an alternative suspect in the case, Doug Mixon. Mr. Ellis signed an affidavit attesting to the truthfulness of the information he conveyed to Mr. Shannon. (See ATTACHMENT "D").

In late July or early August 2017, Keith Ellis was housed in B-Dorm in cell B104 at Graceville D.F. Around that time, a man was placed in the cell next to Mr. Ellis. Shortly after the man transferred to B103, two younger black males confronted the man about the "88" tattoo on his arm.[6] Fearing the boys intended to harm the man,[7] Mr. Ellis—a black man himself—stepped in and told the boys to stand down and leave the man alone. Once the man saw Mr. Ellis stand up for him, he warmed up to Mr. Ellis. As Mr. Ellis saw it, the man realized he could trust Mr. Ellis. The two men spoke of their lives and how they got to be where they were. The man introduced himself as "Doug."

Doug was eager to share details of his life with Mr. Ellis. His stories ranged from cooking meth and dealing drugs, to setting multiple things on fire and not getting caught. Mr. Ellis and Doug also discussed money and medical co-payments that get taken from inmate canteen accounts.

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[6] The Florida Department of Corrections identifies Doug Mixon as having a tattoo of an eagle with the numbers 88 on his right arm. A copy of the DOC Inmate Population Information Detail for Doug Mixon is attached as ATTACHMENT "E".

[7] The Anti-Defamation League has identified "88" as a white supremacist numerical code for "Heil Hitler." *See*, https://www.adl.org/education/references/hate-symbols/88. (Last accessed August 14, 2018).

The conversation about medical payments let to a discussion about Ms. Matheny. Doug told Mr. Ellis that he burned a girl in her car on Ms. Matheny's property, and that Ms. Matheny was the aunt or family friend of the man who was wrongfully convicted of Doug's crime.[8]

Doug told Mr. Ellis that he killed the girl because she was messing around with his daughter's boyfriend. The boyfriend had dogged his daughter and screwed her over so Doug knew he had to do something to fix the problem. He told Mr. Ellis that he burned the girl up in her car and made it look like "the kid" did it. He told Mr. Ellis "the kid" was now on death row for the murder.

Weeks after Mr. Ellis had this conversation with Doug, Doug was transferred out of B-Dorm. Mr. Ellis did not tell anyone of the conversation at the time. Mr. Ellis saw Doug in the medication line several weeks later and asked him where he had been. Doug told Mr. Ellis that he had been to court and people were telling on him for burning that girl up in the car. He told Mr. Ellis that even people from Alabama were telling on him. Doug then mentioned that Ms. Matheny was the one causing all the problems and he was going to have to "deal with her." Doug told Mr. Ellis if he was not able to take care of her, he would have to get his kids to do it. Shortly after this conversation, Mr. Ellis saw Doug in the yard and told him he wanted to talk to him, but Doug would never meet him.

Fearing for Ms. Matheny's safety, Mr. Ellis went to Ms. Matheny and warned her that Doug was angry and intended to harm her because word had gotten out about the girl and car he

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[8] Karon Matheny does, in fact, own land bordering Charlie Skinner's property. It was never definitively determined whether the body was found on Skinner's property or neighboring land. The area where the victim's car was found is visible from a trailer that sits on property that Ms. Matheny owns. Mr. Calhoun is a friend of the Matheny family. He went to school with Ms. Matheny's daughter and remained close with the family even after they both graduated from high school.

burned on Ms. Matheny's property and he blamed her for the leak. Mr. Ellis also told the assistant warden the same information he told Ms. Matheny. He did not speak of it again until he was approached by Mr. Shannon on October 30, 2017.

Mr. Ellis's name does not appear anywhere in the voluminous records that were provided pre-trial to trial counsel, nor do they appear in any of the records obtained by postconviction counsel. Mr. Ellis was not a witness at trial, nor was his name ever mentioned at trial. None of the information he provided is remotely similar to any information contained in the pre-trial or postconviction records. None of the information he provided is remotely similar to any of the information that was presented at Mr. Calhoun's trial. There is no indication that the prosecution in this case ever received or knew of the information Mr. Ellis provided. Thus, it is evident from the record that neither this Court, Mr. Calhoun, his defense team, nor the prosecution were aware of this information prior to the filing of this claim and it could not have been discovered through due diligence.

The nature of this additional newly discovered evidence of another confession by Doug Mixon is such that it would probably produce an acquittal on retrial. The case against Mr. Calhoun was largely, if not entirely, circumstantial. There was no confession, no eyewitnesses, and no motive for Mr. Calhoun to kill the victim. Mr. Calhoun adamantly maintained his innocence and claimed someone else committed the crime. Trial counsel put on evidence in her case in chief of suspicious events that occurred on the night of the victim's disappearance. Trial counsel went to great lengths to suggest that Brittany Mixon—Doug Mixon's daughter—contaminated the crime scene and planted evidence. In her closing argument, trial counsel made a vague argument, without any evidentiary basis, that Brittany Mixon's father may have been involved in the crime. (T. 1199).

Mr. Ellis is now the third person to disclose to Mr. Calhoun's defense team that Mixon has confessed to killing the victim. The newly discovered evidence of Mr. Mixon's confession to Mr. Ellis independently implicates Mr. Mixon in the victim's murder and, combined withal the other evidence adduced at the evidentiary hearing in this case, would lead a jury to the conclusion that there was not proof beyond a reasonable doubt of Mr. Calhoun's guilt. While this is sufficient to satisfy *Jones II*, the Court must consider the effect of this newly discovered evidence on Mr. Calhoun's conviction in addition to all of the admissible evidence that could be introduced at a new trial. Cumulative analysis of all the evidence must be conducted so there is a "total picture" of the case. *Hildwin*, 141 So. 3d at 1184. This means the Court must consider Mr. Mixon's confession, in addition to the fact that he was always considered an alternative suspect whose alibi has been proven to be false and whose daughter was alleged to have planted evidence, as argued by defense counsel at trial.[9] The Court must also consider the evidence of Natasha Simmons' strange and suspicious encounter with Mr. Mixon and Charlie Utley on or about the day of the victim's disappearance,[10] Mr. Mixon's admission to Robert Vermillion that he was involved in the victim's death,[11] and Mr. Mixon's confession to Jose Contreras[12] that he killed the victim.[13]

This newly discovered evidence would have provided trial counsel with her much needed evidentiary basis to convert a vague suggestion of Mr. Mixon's guilt into a clear and powerful argument of a viable alternative suspect who (a) was seen covered in blood and carrying an empty gas can after the victim was burned in her car with the use of an accelerant and (b) later confessed

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9 *See* Claim III(F) of Mr. Calhoun's 3.851 motion.

10 *See* Claims XV and XVI of Mr. Calhoun's 3.851 motion.

11 *See* Claim 1 *supra*.

12 Mr. Contreras was Mr. Mixon's alleged alibi for the night the victim was killed. However, Mr. Contreras testified at the evidentiary hearing that Mr. Mixon's claim that he was with him on the night of the murder was false.

13 *See* Claim III(F) of Mr. Calhoun's 3.851 motion.

to killing the victim to at least three people that counsel knows about. Cleary, this newly discovered evidence would have cast the whole case against Mr. Calhoun in a different light, a light of reasonable doubt and the probability of an acquittal on retrial.

Mr. Calhoun is entitled to an evidentiary hearing on this claim. The records and files in this case do not conclusively establish that he is entitled to no relief.

CONCLUSION AND RELIEF SOUGHT

Mr. Calhoun requests the following relief, based on his prima facie allegations demonstrating violation of his constitutional rights:

1. That he be allowed leave to supplement and/or amend this motion should new claims, facts, or legal precedent become available to counsel;

2. That he be granted an evidentiary hearing; and

3. That his sentence of death be vacated.

Respectfully submitted,

ROBERT S. FRIEDMAN
Capital Collateral Regional Counsel – North

/s/Stacy Biggart
STACY BIGGART, ESQ.
Assistant CCRC-North
Florida Bar Number 0089388
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/s/Elizabeth Salerno
ELIZABETH SALERNO, ESQ.
Assistant CCRC-North
Florida Bar Number 1002602
Elizabeth.Salerno@ccrc-north.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically served upon Lisa Hopkins, Assistant Attorney General, (lisa.hopkins@myfloridalegal.com) and Brandon Young, Assistant State Attorney, (brandon.young@sa14.fl.gov) on the 17st day of August, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart_____
STACY R. BIGGART
Asst. Capital Collateral Regional Counsel-North
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(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

ATTACHMENT A

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR HOLMES COUNTY

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO. 11-011CF

JOHNNY MACK SKETO CALHOUN,

Defendant.

SENTENCING ORDER

The Defendant was tried before this Court on February 20, 2012 through February 29, 2012. The jury found the Defendant guilty of Murder in the First Degree, and Kidnapping. On February 29, 2012 the jury recommend by majority vote (9-3) that the death sentence be imposed on the Defendant for the murder of Mia Chay Brown. This Court gives great weight to the jury's recommendation. On April 4, 2012, the State and Defendant presented additional evidence and argument during the *Spencer* hearing before the Court. The Defendant presented additional evidence and argument he contends demonstrates mitigating evidence. The State argued the aggravating circumstances previously presented at trial. The Court did not permit the State to present any evidence or argument of an aggravating circumstance not previously argued to the jury. Additional arguments were made to the Court. The Defendant was given an opportunity to be heard, and he addressed the Court.

This Court is now required to consider and give individual consideration to each and every aggravating and mitigating circumstance as set forth by Section 921.141, Florida Statutes, including any and all non-statutory mitigating circumstances. Having heard all of the evidence introduced at trial and the *Spencer* hearing, as well as considering the sentencing memoranda of the State and Defendant, this Court now addresses each of the aggravating and mitigating circumstances:

AGGRAVATING CIRCUMSTANCES

1. The capital felony was especially heinous, atrocious and cruel (HAC).

HAC can be found in torturous murders evincing extreme and outrageous depravity as exemplified by a desire to inflict a high degree of pain or an utter indifference to human life. The victim was bound and gagged with tape, driven around for hours in the trunk of her own vehicle, taken across state lines to a secluded wooded area and set ablaze in an inferno that consumed everything inside the car with such ferocity that it melted windshield glass. All that

victim's camera was found on the floor of the defendant's trailer displaying an image of the inside roof of the trailer. Agent Jennifer Roeder of the Florida Department of Law Enforcement-Digital Evidence Section estimated the image to have been taken between 3:30 and 4:00 a.m., December 17, 2010.

The defendant placed the victim in the trunk of her car, and drove without incident across the state line into Alabama. The defendant was recognized driving alone in the victim's car about 5:30 a.m., by a Gladstone's convenience store clerk in Alabama, north of Hartford. He calmly purchased cigarettes, and when asked about the dried blood and scratches on him, without emotion he replied he had been deer hunting. The defendant drove south in the car bearing a Florida license plate, but not before lingering on the front porch long enough to be recognized by another patron. The defendant had driven at least fourteen (14) miles from Esto, Florida to the Gladstone convenience store, and chose not to abandon his plan.

The defendant drove to a secluded wooded area on his brother-in-law's property, between Geneva and Hartford, Alabama. The defendant was well acquainted with this area, having recently used the private campsite near a pond. The defendant did not abandon his plan.

Less than 1500 feet from his family's campsite, the defendant drove the vehicle into a thicket of underbrush and pines, careful to conceal it in excess of 400 feet in a straight line from the nearest clearing. Testimony established a winding debris field through the thicket to where the vehicle came to its final resting place to be 625.2 feet from the clearing. With the victim inside the trunk, and still breathing, the defendant ignited the car with a light petroleum distillate, such as Coleman fuel and lighter fluid. The defendant used a substance other than oil or gasoline. This establishes the "heightened premeditation" element of CCP. Mia Chay Brown burned to death in a fiery tomb, only to be found by chance three days later. Witnesses reported seeing black smoke in the area between 11:00 and 11:30 a.m., Friday December 17, 2010. The defendant would later boast to law enforcement at about 2:00 p.m., that same rainy afternoon, he remained concealed near the campsite and was close enough to reach out and touch a deputy.

For in excess of fourteen hours the defendant was able to implement his plan of murder, undetected and undeterred by no one. He had ample opportunity to release the victim, but instead after substantial reflection acted out his plan. The defendant was deliberately ruthless, given the manner in which he killed the victim, and took no steps to stop the fire once he started it. There is no evidence in the record that defendant had any pretense of moral or legal justification to carry out his murder of Mia Chay Brown, a person from whom he knew he could ask a favor. The record clearly demonstrates the defendant acted without provocation. At no time did the defendant abandon his plan. The Court determines the four part test has been demonstrated by the totality of the circumstances, and proven beyond every reasonable doubt. The aggravating circumstance of CCP is established by competent and substantial evidence. The Court assigns very great weight to this aggravating circumstance.

Brooks' drive him beyond Esto to Bonifay, Florida. While on the way, the defendant asked to be let out on an isolated dirt road near the state line.

The defendant evaded law enforcement until December 20, 2010, when he was located inside his own trailer at American Precious Metals, in Esto, Florida. According to Captain Harry Hamilton, HCSO, it appeared as if the evidence tape had been broken and defendant was found hiding inside the frame of his bed, with items stacked on the mattress above him.

This Court finds the defendant's primary purpose of the killing of Mia Chay Brown was to avoid his own arrest. The Court finds beyond all reasonable doubt that the supporting evidence establishes this aggravating circumstance and gives it very great weight.

STATUTORY MITIGATING CIRCUMSTANCES

The Court will address each statutory mitigating circumstance provided by Section 921.141, Florida Statutes, and every non-statutory mitigating as argued by Defendant.

1. The Defendant has no significant history of criminal activity.

The Defendant established that he had a prior criminal record consisting of only a misdemeanor conviction for Driving While License Suspended, and a violation of probation therein. Lt. Bill Pate, Holmes County Sheriff's Office (HCSO) testified the Defendant has no prior felony convictions. The State did not dispute this. The Court finds that this mitigating circumstance has been established by the greater weight of the evidence, and it is entitled to significant weight. Hess v. State, 794 So. 2d 1249 (Fla. 2001).

NON-STATUTORY MITIGATING CIRCUMSTANCES

The Defendant suggests the Court consider the existence of several non-statutory mitigating circumstances. The Court will address each one.

1. The Defendant had good jail conduct pending and during trial.

According to Deputy Pam Roberts, HCSO, the Defendant was quiet, respectful and presented no disciplinary problems while incarcerated. Lt. Bill Pate, HCSO, echoed that Defendant did not pose a disciplinary problem either at the courthouse during trial or during transport to and from his daily court appearances. The Defendant suggests that his good conduct and respect for authority demonstrates his ability to successfully adapt to a prison sentence of Life without possibility of parole. The Court finds this mitigating circumstance has been established by the greater weight of the evidence; however, it is afforded little weight.

2. The Defendant has been a positive role model to other inmates.

The Defendant presented numerous witnesses who spoke of his new-found faith and religious devotion while incarcerated. Pastor A. J. Lombardin testified as to the Defendant's

5. Defendant's childhood history.

By all accounts, the Defendant had a happy childhood filled with family and friends. Defendant was a good student and never a behavioral problem in school. Defendant played sports through his middle and high school years. Defendant was a Cub Scout, Boy Scout and lacked one credit to become an Eagle Scout. Defendant was the youngest of five children. From testimony of family and friends, it appears that the Defendant's upbringing was exemplary. There is no suggestion he was deprived or lacked the attention and affection of loving parents. Defendant offers this evidence to demonstrate his ability to work in group settings, achieve goals, and to have a positive influence. The Defendant is thirty four (34) years old and in good health. Based upon the totality of circumstances in this case the Court determines that this mitigating circumstance has been established, and is afforded little weight.

6. The Defendant will be incarcerated for the remainder of his life with no danger to others.

The Court listened to argument during the Penalty Phase that the length of the Defendant's potential mandatory life sentence could be considered. The Defendant underscores his potential for positive behavior upon others in prison and his potential for reducing others' recidivism. This Court has considered the ramifications of a sentence of life imprisonment without possibility of parole as impacting other inmates and the community at large. The Court determines this to be a mitigating circumstance and assigns it minimal weight.

7. Defendant was born with Sudden Infant Death Syndrome (SIDS).

Defendant's mother, Mrs. Calhoun, testified the Defendant was born with SIDS. No medical evidence was presented to suggest the basis of diagnosis, length of time of presenting symptoms, or any long term detrimental impact upon Defendant. The Court is not convinced that the circumstances of the Defendant's birth or SIDS diagnosis caused any long term physical or emotional problems. The Court does not find this to be a mitigating circumstance.

8. Defendant's statement to the Court.

The Court heard from the Defendant at the *Spencer* hearing. Defendant expressed his love for his family, and sincerity for his new-found faith. Defendant expressed remorse for things that he may have done during his life, and acknowledged responsibility for his mistakes. However, the Defendant stopped short of addressing anything in regards to this case or acceptance of responsibility therein. The fact the Defendant makes no comment about his actions in this case is neither an aggravating nor mitigating circumstance.

Defendant spoke, albeit briefly, about his voluntary drug and alcohol use, as well as promiscuity during his life. Nothing further was presented as to these general statements, and the Court does not find by the greater weight of the evidence that any mitigating circumstance exists.

The Defendant shall be remanded to the Florida Department of Corrections for execution of this sentence.

MAY GOD HAVE MERCY ON YOUR SOUL.

DONE AND ORDERED, in open Court at Bonifay, Holmes County, Florida this 18th day of May, 2012.

CHRISTOPHER N. PATTERSON
Circuit Judge

Copies to:

Glenn Hess, Esq., State Attorney, Fourteenth Judicial Circuit

Brandon Young, Esq., Assistant State Attorney

Kimberly D. Jewell Dowgul, Esq., Attorney for Defendant

Kevin Carlisle, Esq., Attorney for Defendant

STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS

The CIRCUIT Court of the 14th Judicial Circuit in the HOLMES County Florida Term Spring, 2012, in the case of

Inst:201230002003 Date:5/22/2012 Time:9:37 AM
DC,Cody Taylor,Holmes County B:490 P:165

State of Florida

vs

JOHNNY SKETO CALHOUN
Defendant

Case No. 11000011CFAXMX

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF THE ABOVE-REFERNCED COUNTY AND THE DEPARTMENT OF CORRECTIONS, GREETINGS:

The above named defendant has been duly charged, convicted, adjudicated guilty, and sentenced for the offense(s) set forth in the attached certified copies of Indictment(s)/Information(s), Original Judgment(s) Adjudicating Guilt and Sentencing Orders(s). In addition to the Original Judgment, if judicial supervision has been revoked subsequent to the entry of the judgment adjudicating guilt, a certified copy of the order revoking supervision (rather than a duplicative judgment adjudicating guilt) is also attached in support of this commitment.

Now therefore, this is to command you, the Sheriff, to take and keep and, within a reasonable time after receiving this commitment, deliver the defendant into the custody of the Department of Corrections; and this is to command you, the Secretary of the Department of Corrections, to keep and imprison the defendant for the term of the sentence. Herein fail not.

WITNESS the Clerk, and the Seal thereof,
this 18th of May, 2012.

Cody Taylor
Clerk of the Circuit Court
BY: _____
Deputy Clerk

DC6-306(Revised 5/3/11)

Inst:201230002003 Date:5/22/2012 Time:9:37 AM
_____DC,Cody Taylor,Holmes County B:490 P:167

STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT
IN AND FOR HOLMES COUNTY FLORIDA

STATE OF FLORIDA,
-vs-
JOHNNY SKETO CALHOUN
Defendant.

UCN: 302011CF000011CFAXMX
Case Number: 11000011CFAXMX
OBTS#: 3001011689

Judgment

☐ PROBATION VIOLATOR
☐ COMMUNITY CONTROL VIOLATOR
☐ RESENTENCE
☐ RETRIAL

The defendant JOHNNY SKETO CALHOUN being personally before the court represented by KIMBERLY JEWELL DOWGUL, the attorney of record and the state represented by BRANDON YOUNG and having been tried and found guilty by jury of the following crime(s):

SEQ #	CNT #	CHARGE		LVL DGR
1	1	782.04.1A1	FIRST DEGREE MURDER	Felony Capital
2	2	787.01.	KIDNAPPING	Felony First Degree

☐ The PROBATION/COMMUNITY CONTROL previously ordered in this case is revoked.

☐ The PRIOR ADJUDICATION OF GUILT IN THIS CASE IS CONFIRMED and no cause having been 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 having been convicted or found guilty of attempts or offenses relating to murder, the defendant shall be required to submit blood specimens or other biological specimens approved by FDLE.

DONE and ORDERED at HOLMES County, Florida this 18th day of May, 2012.

CHRISTOPHER N. PATTERSON
CIRCUIT COURT JUDGE

STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT
IN AND FOR HOLMES COUNTY FLORIDA

STATE OF FLORIDA,
-vs-
JOHNNY SKETO CALHOUN
Defendant.

UCN: 302011CF000011CFAXMX
Case Number: 11000011CFAXMX

Inst:201230002003 Date:5/22/2012 Time:9:37 AM
DC,Cody Taylor,Holmes County B:490 P:169

Sentenc

(As To Count 2 Statute 787.01)

The defendant, being personally before this court, accompanied by the defendants' attorney of record, KIMBERLY JEWELL DOWGUL 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 applicable provision)

☐ and the court having on 05/18/2012 deferred imposition of sentence until this date 05/18/2012

☐ and the court having previously entered a judgment in this case on _____ now resentences 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 SENTENCE OF THE COURT that:

The Defendant is hereby committed to the custody of the Department of Corrections.

☐ The defendant pay a fine pursuant to section 775.083, Florida Statutes, plus a 5% surcharge pursuant to section 950.25 Florida Statutes, as indicated on the Fine/Costs/Fee Page.

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

TO BE IMPRISONED:

For a term of **100 YEARS .**

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

Inst:201230002003 Date:5/22/2012 Time:9:37 AM
DC,Cody Taylor,Holmes County B:490 P:171

STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT
IN AND FOR HOLMES COUNTY FLORIDA

STATE OF FLORIDA,
-vs-
JOHNNY SKETO CALHOUN
Defendant.

UCN: 302011CF000011CFAXMX
Case Number: 11000011CFAXMX
OBTS#: 3001011689

Other Provisions

(As To Count 2, Statute KIDNAPPING)

It is further ordered that the defendant shall be allowed a total of **493.00 day(s)** credit for such time incarcerated before imposition of this sentence.

It is further ordered that the sentence imposed for this count shall run **Concurrent** with the sentence set forth in **count 1** of this case.

CREDIT FOR TIME SERVED:

☐ The Department of Corrections shall apply the original jail time (To be used for Resentencing credit and to compute and apply credit for time served and the and after VOP and VOCC.) gain time awarded pursuant to section 944.275 Florida Statutes. (Pre October 1, 1989)

☐ The Department of Corrections shall apply the original jail time credit and to compute and apply credit for time served and unfortified gain time awarded during prior service of incarceration of the split sentence pursuant to section 948.06 (6) Florida Statutes. (Post October 1, 1989)

☐ Defendant is allowed credit for _____ days credit county jail served between date of arrest as a violator and date of resentencing. The Department of Corrections shall apply original jail credit awarded and shall compute and apply credit for actual time served in prison and any earned and unfortified gain time awarded prior service on:

CASE NO: _____ COUNT _____

_____ _____

pursuant to section 944.276 Florida Statutes.

DONE and ORDERED at HOLMES County, Florida this 18th day of May, 2012.

CHRISTOPHER N. PATTERSON
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR HOLMES COUNTY, FL

STATE OF FLORIDA

vs. CASE NO. **10-356CF – ct 2**

JOHNNY S. CALHOUN,
Defendant

Inst:201230002003 Date:5/22/2012 Time:9:37 AM
_____DC,Cody Taylor,Holmes County B:490 P:173

CHARGES/COSTS/FEES
ADDITIONAL COUNTS

The defendant is hereby ordered to pay the following sums if checked:

__X__ $ 20.00 pursuant to Section 938.06, F.S. (Crime Stoppers Trust Fund)

__X__ $100.00 Fine pursuant to Section 775.083, F.S. plus 5% surcharge of $5.00 pursuant to Section 938.04, F.S.

_____ Other: _____.

TOTAL AMOUNT ASSESSED: $ 125.00 .

DONE AND ORDERED in open Court in Holmes County, Florida, this 18th day of May, 2012.

Christopher N. Patterson, Circuit Judge

Revised 07/01/2008

ATTACHMENT B

IN THE SUPREME COURT OF FLORIDA

CASE NOS. SC 18-340; 18-1174

JOHNNY MACK SKETO CALHOUN,

Appellant

v.

STATE OF FLORIDA,

Appellee.

APPELLANT'S MOTION TO DIRECT THE CIRCUIT COURT TO STAY HIS SUCCESSIVE 3.851 PROCEEDING UNTIL COMPLETION OF THIS APPEAL, OR, IN THE ALTERNATIVE, TO RELINQUISH JURISDICTION

Appellant JOHNNY MACK SKETO CALHOUN respectfully requests that this Court direct the circuit court to hold his Successive 3.851 proceeding in abeyance until this appeal is final. *See Tompkins v. State*, 894 So.2d 857, 859-60 (Fla. 2005). In the alternative, Mr. Calhoun asks this Court to relinquish jurisdiction to the circuit court. As grounds in support, Mr. Calhoun states:

1. Mr. Calhoun is an indigent defendant under sentence of death at Union Correctional Institution in Raiford, Florida.

2. On September 25, 2015, Mr. Calhoun filed his initial Motion to Vacate Judgments of Conviction and Sentence pursuant to Fla. R. Crim. P. 3.851. The trial court granted Mr. Calhoun's claim for *Hurst* relief prior to the evidentiary hearing.

3. After the evidentiary hearing on September 15, 19 and 20, 2017, the trial court denied relief on all guilt phase claims. Mr. Calhoun's appeal of the denial of his 3.851 motion and his petition for writ of habeas corpus are pending before this Court.

4. Prior to the evidentiary hearing, Mr. Calhoun filed a Motion to Amend to add a claim of newly discovered evidence based on incriminating statements by Doug Mixon to Robert Vermillion. The trial court denied Mr. Calhoun's Motion to Amend but allowed him to proffer Mr. Vermillion's testimony at the evidentiary hearing. Although the trial court denied Mr. Calhoun's Motion to Amend to formally add the claim to his postconviction case, the court analyzed the claim on the merits and denied relief.

5. Mr. Calhoun filed a subsequent Motion to Amend and Reopen the Evidentiary Hearing on November 1, 2017, based on the newly discovered evidence of Doug Mixon's incriminating statements to Keith Ellis. The trial court denied Mr. Calhoun's motion on November 2, 2017.

6. Due to the peculiar posture Mr. Calhoun found himself in regarding his newly discovered evidence claims of Doug Mixon's statements to Robert Vermillion

and Keith Ellis, he filed a Successive Motion for Postconviction Relief in Light of Newly Discovered Evidence on August 17, 2018.

4. In order to preserve his right to the ultimate adjudication of his newly discovered evidence claims on the merits, Mr. Calhoun makes the present motion, which contains a request that this Court relinquish jurisdiction to the circuit court.

5. However, in this case the sound use of this Court's discretionary authority under *Tompkins v. State*, 894 So.2d 857, 859-60 (Fla. 2005) would be to decline to relinquish jurisdiction. Rather, in the interests of justice and judicial economy, this Court should decide the instant appeal first. If Mr. Calhoun prevails either before this Court or before the United States Supreme Court after a Petition for Writ of Certiorari, his case will be remanded to the circuit court for a new trial. At that time, Mr. Calhoun's jury, will hear his case and determine his innocence.

6. As such, Mr. Calhoun requests that this Court direct the circuit court to stay Mr. Calhoun's Successive 3.851 proceeding until the decision in this appeal becomes final. *See Tompkins v. State*, 894 So. 2d 857, 859–60 (Fla. 2005) ("[I]f an appeal is pending in a death penalty case and this Court denies a motion to relinquish jurisdiction for the trial court to consider a new claim, the trial court should hold any successive postconviction motion in abeyance until the appeal process is completed.").

WHEREFORE, Mr. Calhoun respectfully requests that this Court direct the circuit court to stay his Successive 3.851 proceeding, or in the alternative, issue an Order relinquishing jurisdiction, allowing a significant period of relinquishment so that the discovery process can commence and the evidentiary hearing can be completed.

Respectfully submitted,

ROBERT S. FRIEDMAN
Capital Collateral Regional Counsel – North

/s/Stacy Biggart
STACY BIGGART, ESQ.
Assistant CCRC-North
Florida Bar Number 0089388
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Stacy.Biggart@ccrc-north.org

/s/Elizabeth Salerno
ELIZABETH SALERNO, ESQ.
Assistant CCRC-North
Florida Bar Number 1002602
Elizabeth.Salerno@ccrc-north.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically served upon Lisa Hopkins, Assistant Attorney General, (lisa.hopkins@myfloridalegal.com) and Brandon Young, Assistant State Attorney, (brandon.young@sa14.fl.gov) on the 17st day of August, 2018.

Respectfully submitted,

/s/ Stacy R. Biggart_____
STACY R. BIGGART
Asst. CCRC-North
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Tallahassee, Florida 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

ATTACHMENT C

Affidavit of Robert C. Vermillion

I, Robert C. Vermillion, do hereby swear or affirm this statement to be true and correct.

1. I am currently incarcerated in the Holmes County Jail and am not under the influence of any drugs or alcohol.

2. On August 31, 2017, I spoke to Alice Copek, Kathleen Pafford and Jayson Shannon with Capital Collateral Regional Counsel-North. I understand they work for Johnny Mack Sketo Calhoun.

3. Brandon Brown is my second cousin. We were raised together and grew up together as if we were brothers.

4. I knew Mia Brown before she died. I sat behind her in class in high school and she then married my cousin, Brandon.

5. In 2011, I was incarcerated with Johnny Mack Sketo Calhoun at the Holmes County Jail. We were in pods next to each other.

6. I had it out for Johnny Mack because he was charged with killing Mia, who was like family to me.

7. After some time, Johnny Mack started talking to me and told me that he didn't kill Mia. Over time, I came to see Johnny Mack as a person who wasn't capable of murder.

8. After Mia was killed, I heard rumors that Doug Mixon killed her and asked Johnny Mack if he knew anything about it.

9. Johnny Mack said he couldn't say anything about it.

10. Over time I came to be convinced that Doug Mixon killed Mia.

11. I knew of Doug Mixon and his reputation but didn't know him personally.

12. I never saw Doug Mixon after Mia's death until the summer of 2016. When he started dating a girl who was living with my aunt.

13. I lived close to my aunt's house and would hang out at her house a lot.

14. One day, I heard my aunt's roommate talking to Doug Mixon on the phone and invite him over. I asked my aunt why she would let him come over, knowing what he did to Mia. My aunt told me to mind my own business.

15. I couldn't understand why she would let him (Doug) come to her house when my whole family suspected that he killed Mia.

16. Doug Mixon was at my aunt's house a handful of times. I ignored him the first few times he was around.

17. Finally, for my aunt's sake, I tried to be civil towards Doug, but I really couldn't do it. There was always an underlying tension between us.

18. The last time Doug was at my aunt's house, we were hanging out for a couple of hours and I could tell Doug was growing nervous. I wasn't leaving him alone and was following him everywhere he went.

19. I followed him into my aunt's roommate's room. He became even more agitated and said to me "I know what I've done. I'm sorry. I'm not proud of it." He then asked me to forgive him.

20. I told Doug I wasn't going to forgive him and that he needed to ask Brandon for forgiveness. Doug didn't respond to me, but he started freaking out and yelling "I know why y'all have me up here!" and pulled a knife on me.

21. Doug then started convulsing and panicking and he kicked the window AC unit out. I went outside to try and put the AC unit back in, and Doug lunged at me, and stabbed me with the knife he had.

22. At some point during the commotion, 911 was called and an ambulance came. Doug was taken from the house in an ambulance.

23. I haven't seen Doug since.

24. I didn't tell anybody about what Doug said to me because I didn't want to drag my family through this again and upset them. I also feared for my children because I knew what kind of person Doug was.

25. About a month ago I was attending a class at the Holmes County Jail. Dennis Lee, the class instructor, mentioned Johnny Mack's case. I told him that an innocent man was in prison and that Doug Mixon was the one who killed Mia.

26. My comments to Dennis Lee was the last time I spoke about this until Johnny Mack's legal team showed up. I have no idea how they found out about me and what I know.

This statement was prepared for me by Johnny Mack's legal team, in my presence, based entirely on the information I gave them.

I have not been promised anything in exchange for this statement.

I have not been threatened or coerced into making this statement.

Robert Christopher Vermillion 8/31/17

Robert C. Vermillion

JAYSON SHANNON
Commission # FF 051470
Expires September 5, 2017
Bonded Thru Troy Fain Insurance 800-385-7019

8/31/17

ATTACHMENT D

State of Florida
County of Jackson

Affidavit of Keith Shawn Ellis

I, Keith Shawn Ellis, am over the age of 18 and am currently incarcerated in Graceville Correctional Facility.

In late July or Early August 2017, I was housed in B-Dorm. Around that time a man was placed into the cell next to me, B103. I was in B104. Shortly after him being moved in, I noticed two younger black males confront this man about the 88" tatoo on his arm. I stepped up and told them to leave the man alone.

From there on, this man realized I was someone he could trust. We spoke about our lives and how we got here but he was mainly sharing more of himself. These stories ranged from him cooking meth, and dealing drugs to setting stuff on fire. He bragged about setting multiple things on fire and not getting caught. Saying they didn't have enough evidence to convict him.

During this same conversation, we started talking about money and medical copayments that get taken from your canteen account. This conversation brought up the nurse, Ms. Matheny. By this time, I was told to call him Doug. Doug then began to elaborate how she was involved with one of his burnings. Ms. Matheny owned the land and her nephew or friend of the family was who Doug framed.

Doug continued to say this all happened because the relationship this guy had w/ his daughter went bad, he dogged her out and screwed her over. Doug never went into detail about what happened between them but said he had to do something to fix the problem.

Doug then stated to me, to get back at the kid, I burned the girl up in the car and made it look like the kid did it. Now the kids on Death Row.

The conversation continued but we didn't talk more about that incident until after he was transferred out of my Dorm (B) weeks later.

I saw him in the medication line and asked him where did he go. Doug said he had court and people were telling on him for what he had done. He even told me people from Alabama were telling on him. Doug also said Ms. Matheny was the one causing all the problems and he was going to deal with her. If he wasn't going to take care of her, his kids were going to.

I didn't see Doug again until he was leaving yard and I told him I wanted to talk. Doug never met with me again.

I decided to tell Ms. Matheny after Doug didn't meet with me because I was worried for her safety. After telling her, I was escorted to tell the assistant warden.

I relayed this information to the assistant warden [redacted] along with Ms. Newman and another captain.

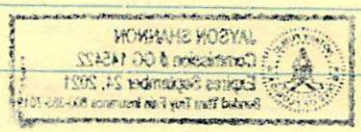
I have never spoke about this with anyone else until I met [redacted] with Jayson Shannon, an investigator that represents an inmate on Death Row. He wrote this statement for me and have not misinterpretted my words. I swear to and affirm everything in this affidavit. I was not promised anything or coerced into signing this statement.

KEC 098905 10-30-17

Keith Shawn Ellis Date
DC# 098905
Produced FL DOC ID as identification

JAYSON SHANNON
Commission # GG 145422
Expires September 24, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

10/30/17


JAYSON SHANNON
Commission # GG 145422
Expires September 21, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

ATTACHMENT E

Florida Department of Corrections
Julie L. Jones, Secretary

Corrections Offender Network

Inmate Population Information Detail

(This information was current as of 6/11/2017)

DC Number:	Q31073
Name:	MIXON, CHARLES D
Race:	WHITE
Sex:	MALE
Hair Color:	BROWN
Eye Color:	BROWN
Height:	5'11"
Weight:	243 lbs.
Birth Date:	01/27/1961
Initial Receipt Date:	06/01/2017
Current Facility:	NWFRC ANNEX.
Current Custody:	PENDING
Current Release Date:	02/20/2019

VINELink CLICK HERE for Custody Status Updates

Send money to this inmate.

(Release Date subject to change pending gain time award, gain time forfeiture, or review. A 'TO BE SET' Release Date is to be established pending review.)

Aliases:	
CHARLES D MIXON	CHARLES DOUGLAS MIXON
DOUG MIXON	RE-UP MIXON

Scars, Marks, and Tattoos:

Type	Location	Description
TATTOO	LEFT CHEST	ROSE
TATTOO	RIGHT ARM	88, EAGLE

Current Prison Sentence History:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence Length
02/11/2017	FEL/DELI W/GUN/CONC WPN/AMMO	05/17/2017	HOLMES	1700068	2Y 0M 0D
02/11/2017	GRAND THEFT,300 L/5,000	05/17/2017	HOLMES	1700068	2Y 0M 0D
07/26/2015	BURGUNOCCSTRUC/CV OR ATT.	05/17/2017	HOLMES	1500267	2Y 0M 0D

Note: The offense descriptions are truncated and do not necessarily reflect the crime of conviction. Please refer to the court documents or the Florida Statutes for further information or definition.

Incarceration History:

Date In-Custody	Date Out-Custody
06/01/2017	Currently Incarcerated

First | Previous | Next | Last | Return to List | New Search

Record: 2 of 2

The Florida Department of Corrections updates this information regularly, to ensure that it is complete and accurate, however this information can change quickly. Therefore, the information on this site may not reflect the true current location, status, release date, or other information regarding an inmate.
This database contains public record information on felony offenders sentenced to the Department of Corrections. This information only includes offenders sentenced to state prison or state supervision. Information contained herein includes current and prior offenses. Offense types include related crimes such as attempts, conspiracies and solicitations to commit crimes. Information on offenders sentenced to county jail, county probation, or any other form of supervision is not contained. The information is derived from court records provided to the Department of Corrections and is made available as a public service to interested citizens. The Department of Corrections makes no guarantee as to the accuracy or completeness of the information contained herein. Any person who believes information provided is not accurate may contact the Department of Corrections.
For questions and comments, you may contact the Department of Corrections, Bureau of Classification and Central Records, at (850) 488-9859 or go to Frequently Asked Questions About Inmates for more information. This information is made available to the public and law enforcement in the interest of public safety.

Search Criteria: Last Name: mixon First Name: charles Search Aliases: YES Offense Category: ALL County of Commitment: ALL Current Location: ALL

Return to Corrections Offender Information Network