

IN THE SUPREME COURT OF FLORIDA

ROBERT CRAFT,	:	
Appellant,	:	
v.	:	CASE NO.: SC19-953
STATE OF FLORIDA,	:	
Appellee.	:	
_____	/	

APPELLANT’S MOTION FOR REHEARING

Introduction

In a recent decision affirming Robert Craft’s death sentence, as to one claim, this Court failed to appreciate the essence of the standard of review. As to a second claim, this Court failed to appreciate the rigor of one legal standard and the existence of another. Finally, as to a third issue, this Court failed to appreciate the procedural facts of prior precedent and the expansive scope of a legal rule.

On November 19, 2020, this Court affirmed Craft’s death sentence. In reaching that decision, this Court concluded the trial court’s decision to assign the same slight weight to the “childhood trauma” mitigating circumstance that it assigned to the “good behavior during trial” circumstance was supported by competent, substantial evidence. This Court also concluded that no reversible error occurred in connection with the court’s broader consideration of the mitigating evidence. Finally,

this Court suggested that a trial court's failure to consider and weigh all believable, uncontroverted mitigating evidence should be reviewed for fundamental error unless the defendant had proposed and presented the believable, uncontroverted mitigating evidence at issue in the trial court.

But this Court should grant rehearing, withdraw its opinion of November 19, 2020, and issue a revised opinion. First, in concluding the court's decision to assign the same slight weight to the "childhood trauma" mitigating circumstance that it assigned to the "good behavior during trial" circumstance was supported by competent, substantial evidence, this Court overlooked or misapprehended that competent, substantial evidence is evidence sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.

Second, in concluding no reversible error occurred in connection with the court's broader consideration of the mitigating evidence, this Court overlooked or misapprehended that (1) trial courts have the responsibility to *affirmatively show* that all possible mitigating evidence has been considered and weighed; and (2) a trial court must provide at least some analysis in support of its findings related to the mitigating evidence.

Third, in suggesting that a trial court's failure to consider and weigh all believable, uncontroverted mitigating evidence should be reviewed for fundamental error unless the defendant had proposed and presented the evidence at issue in the

trial court, this Court overlooked or misapprehended that (1) in *Robinson v. State*, 684 So.2d 175 (Fla. 1996), and other similar cases, the defendant had not proposed and presented the believable, uncontroverted mitigating evidence at issue in the trial court; and (2) a trial court's duty to consider and weigh all believable, uncontroverted mitigating evidence applies with no less force when a defendant argues in favor of death and even asks the court to not consider mitigating evidence.

Finally, if the overlooked or misapprehended points of law are properly considered, Craft's death sentence should be reversed and this case should be remanded for—at a minimum—reevaluation of the mitigating evidence and sentence.

Relevant Procedural Background

I. Craft's arguments in this Court.

Among other arguments, Craft argued reversible error occurred when the trial court assigned slight weight to the "childhood trauma" mitigating circumstance. In particular, he contended the court arbitrarily and unreasonably assigned the same weight to that circumstance that it assigned to the "good behavior during trial" mitigating circumstance. *See* Initial Brief pp. 36-42; Reply Brief pp. 7-13. On that note, Craft—as well as the State—anticipated the respective argument would be reviewed for an abuse of discretion. *See* Initial Brief p. 37; Answer Brief p.15.

Craft also argued reversible error occurred in connection with the court's broader consideration of the mitigating evidence. In particular, he contended the

court arbitrarily and unreasonably imposed death without first affirmatively showing all believable, uncontroverted mitigating evidence had been considered and weighed. *See* Initial Brief pp. 47-51; Reply Brief pp. 13-19.

Finally, in response to Craft's arguments, the State asserted that any errors were harmless. *See* Answer Brief pp. 18-19, 26-27. In rebuttal, Craft contended that, at least considered cumulatively, the court's errors were not harmless. *See* Reply Brief pp. 19-24.

II. This Court's decision.

This Court affirmed Craft's death sentence. *Craft v. State*, No. 19-953, slip op. at 1, 26 (Fla. Nov. 19, 2020). In its opinion, this Court decided no reversible error occurred when the trial court assigned the same slight weight to the "childhood trauma" mitigating circumstance that it assigned to the "good behavior during trial" mitigating circumstance. *Id.* at 14-16. More specifically, in relevant part, this Court observed that it "will not disturb the sentencing judge's determination as to the relative weight to give to each established mitigator where that ruling is supported by competent substantial evidence." *Id.* at 14-15.

With that in mind, this Court concluded:

Although Craft argues that the weight assigned to the childhood-trauma mitigator was arbitrary and unreasonable because the trial court also assigned the same weight to the mitigating circumstance that Craft exhibited good behavior during trial, the sentencing order reflects that . . . the trial court's findings with respect to both circumstances are supported by competent, substantial evidence.

Id. at 15. In support of that conclusion, this Court reasoned that, though the court found Craft “experienced a traumatic childhood,” it assigned that circumstance slight weight “based on its findings that ‘there was no showing that these experiences diminished [Craft’s] ability to know or understand right from wrong’ and that ‘the evidence presented was not sufficient to establish that [Craft’s] childhood adolescence had an ill effect on [Craft].’” *Id.*

In its opinion, this Court also decided no reversible error occurred in connection with the court’s broader consideration of the mitigating evidence. *Id.* at 18-20. More specifically, this Court observed that the court grouped the mitigating evidence into four categories. *Id.* at 19-20. This Court then reasoned that certain evidence relating to Craft’s birth, family background, intellectual functioning, and substance abuse history “can be fairly assigned to,” or “relate[s] to,” at least one of those four categories. *Id.* at 20. In addition, this Court explained: “the sentencing order expressly mentions [certain evidence relating to Craft’s actions subsequent to the incident at issue], indicating that rather than overlook those items as potential mitigation, the trial court did not consider them mitigating based on the facts of this case.” *Id.*¹

Finally, in its opinion, this Court suggested a trial court’s failure to consider

¹On a related note, this Court did conclude the court failed to consider and weigh certain evidence relating to Craft’s employment history and experience in prison, but the error was harmless. *Id.* at 21-22.

and weigh all believable, uncontroverted mitigating evidence should be reviewed for fundamental error unless the defendant had proposed and presented the believable, uncontroverted mitigating evidence at issue in the trial court. *Id.* at 22. In making that suggestion, this Court observed: “We note that *Robinson* and other similar cases applying the harmless-error standard of review to trial court errors respecting mitigation address mitigation *proposed* by the defendant.” *Id.* (internal citations omitted).

Argument

I. In its opinion of November 19, 2020, this Court overlooked or misapprehended multiple critical points of law.

“A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its . . . decision.” Fla. R. App. P. 9.330(a)(2)(A). Here, this Court overlooked or misapprehended five critical points of law.

A. In concluding the trial court’s decision to assign the same slight weight to the “childhood trauma” mitigating circumstance that it assigned to the “good behavior during trial” circumstance was supported by competent, substantial evidence, this Court overlooked or misapprehended that competent, substantial evidence is evidence sufficiently relevant and material that a reasonable mind would accept it as adequate to support the decision reached.

This Court concluded the court’s decision to assign the same slight weight to the “childhood trauma” mitigating circumstance that it assigned to the “good behavior during trial” circumstance was supported by competent, substantial evidence. *Craft*,

slip op. at 15. In support of that conclusion, this Court reasoned that, though the court found Craft “experienced a traumatic childhood,” it assigned that circumstance slight weight “based on its findings that ‘there was no showing that these experiences diminished [Craft’s] ability to know or understand right from wrong’ and that ‘the evidence presented was not sufficient to establish that [Craft’s] childhood adolescence had an ill effect on[Craft].’” *Id.*

But competent, substantial evidence is evidence “‘sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.’” *Dausch v. State*, 141 So.3d 513, 517-18 (Fla. 2014) (quoting *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957)). And here, the “conclusion reached” was the court’s conclusion that the “childhood trauma” mitigating circumstance should be assigned the same weight as the “good behavior during trial” circumstance.

With that in mind, the evidence proved Craft acted in an appropriate manner in court. [R1 155] The evidence also demonstrated Craft experienced the following childhood trauma:

- childhood physical abuse;
- childhood sexual abuse;
- childhood physical neglect;
- childhood emotional neglect;
- parents who are separated;

- growing up in a household where someone is incarcerated; and
- growing up in a household where there is someone with a serious drug problem.

[R1 153-54] Assume the evidence did not establish that the above-mentioned childhood trauma (1) “diminished [Craft’s] ability to know or understand right from wrong,” or (2) “had an ill effect on him.” Even then the evidence was simply not sufficiently relevant and material that a reasonable mind would accept it as adequate to support the court’s conclusion that the “childhood trauma” mitigating circumstance should be assigned the same weight as the “good behavior during trial” circumstance.

B. In concluding no reversible error occurred in connection with the trial court’s broader consideration of the mitigating evidence, this Court overlooked or misapprehended that trial courts have the responsibility to *affirmatively show* that all possible mitigating evidence has been considered and weighed.

In support of its conclusion that no reversible error occurred in connection with the court’s broader consideration of the mitigating evidence, this Court reasoned that certain evidence relating to Craft’s birth, family background, intellectual functioning, and substance abuse history “can be fairly assigned to,” or “relate[s] to,” at least one of the categories into which the court grouped the mitigating evidence. *Craft*, slip op. at 20.

But this Court has “repeatedly emphasized the duty of the trial court to consider *all* mitigating evidence ‘contained anywhere in the record, to the extent it

is believable and uncontroverted.” *Muhammad v. State*, 782 So.2d 343, 363 (Fla. 2001). Moreover, almost a quarter-of-a-century ago, this Court declared: it “is clearly the responsibility of the trial court to *affirmatively show* that all possible mitigation has been considered and weighed, and it is error to fail to do so.” *Robinson v. State*, 684 So.2d 175, 179 (Fla. 1996) (emphasis added).

With that in mind, assume the evidence relating to Craft’s birth, family background, intellectual functioning, and substance abuse history could be “fairly assigned,” or “related,” to at least one of the categories into which the court grouped the mitigating evidence. Even then, the court failed to affirmatively show that such believable, uncontroverted mitigating evidence had been considered and weighed.

C. In concluding no reversible error occurred in connection with the trial court’s broader consideration of the mitigating evidence, this Court overlooked or misapprehended that a trial court must provide at least some analysis in support of its findings related to the mitigating evidence.

In support of its conclusion that no reversible error occurred in connection with the court’s broader consideration of the mitigating evidence, this Court also explained: “the sentencing order expressly mentions [certain evidence relating to Craft’s actions subsequent to the incident at issue], indicating that rather than overlook those items as potential mitigation, the trial court did not consider them mitigating based on the facts of this case.” *Craft*, slip op. at 20. And admittedly, in the portions of the sentencing order addressing the procedural facts and considering

the aggravating factors, the court did mention that evidence. [R1 144-51]

But this Court has long made clear that a trial court must provide at least some analysis in support of its findings related to the mitigating evidence.

While all judicial proceedings require fair and deliberate consideration by a trial judge, this is particularly important in a capital case because, as we have said, *death is different*. *Crump v. State*, 654 So.2d 545, 547 (Fla. 1995) (citing *State v. Dixon*, 283 So.2d 1, 17 (Fla. 1973)) (emphasis added). Since the ultimate penalty of death cannot be remedied if erroneously imposed, trial courts have the undelegable duty and solemn obligation to not only consider any and all mitigating evidence, but also to “expressly evaluate in [their] written order[s] each mitigating circumstance proposed by the defendant to determine whether it is supported by the evidence.” *Campbell*, 571 So.2d at 419; *Ferrell v. State*, 653 So.2d 367, 371 (Fla. 1995) (reaffirming *Campbell* and establishing enumerated requirements for treatment of mitigating evidence).

This bedrock requirement cannot be met by treating mitigating evidence as an academic exercise which may be summarily addressed and disposed of. . . . Clearly then, the [sentencing order] can only satisfy Campbell and its progeny if it *truly comprises a thoughtful and comprehensive analysis of any evidence that mitigates against the imposition of the death penalty*. . . . If the trial court does not conduct such a deliberate inquiry and then document its findings and conclusions, this Court cannot be assured that it properly considered all mitigating evidence. In such a situation, we are precluded from meaningfully reviewing the sentencing order.

Walker v. State, 707 So.2d 300, 319 (Fla. 1997) (second emphasis added); *see also Fennie v. State*, 855 So.2d 597, 608 (Fla. 2003).

With that in mind, assume the court did find the evidence relating to Craft’s actions subsequent to the incident at issue not mitigating based on the unique facts of the present case. Even then, the court provided absolutely no analysis in support

of that finding.

D. In suggesting that a trial court’s failure to consider and weigh all believable, uncontroverted mitigating evidence should be reviewed for fundamental error unless the defendant proposed and presented the evidence at issue in the trial court, this Court overlooked or misapprehended that, in *Robinson* and other similar cases, the defendant had not proposed and presented the believable, uncontroverted mitigating evidence at issue in the trial court.

In support of its suggestion that a trial court’s failure to consider and weigh all believable, uncontroverted mitigating evidence should be reviewed for fundamental error unless the defendant proposed and presented the evidence at issue in the trial court, this Court observed: “We note that *Robinson* and other similar cases applying the harmless-error standard of review to trial court errors respecting mitigation address mitigation *proposed* by the defendant.” *Craft*, slip op. at 22 (internal citations omitted).

But, in *Robinson*, 684 So.2d at 175, and other similar cases, the defendant had not proposed and presented the believable, controverted mitigating evidence at issue in the trial court. First, in *Robinson*, Robinson waived his right to present mitigating evidence. *Id.* at 176. Though “[r]elying on *Koon v. Dugger*, 619 So.2d 246 (Fla. 1993), the defense proffered mitigating evidence which it had received from a psychologist . . . and [Robinson]’s mother,” *id.*, “[p]roffered evidence is merely a representation of what evidence the defendant proposes to present and is not actual evidence,”” *Russ v. State*, 73 So.3d 178, 190 (Fla. 2011). Further, in concluding

reversible error occurred when the court failed to consider and weigh all believable, uncontroverted mitigating evidence, this Court repeatedly focused on evidence “in the record,” including evidence contained in “the PSI and [Robinson]’s two psychiatric and clinical evaluations.” *Robinson*, 684 So.2d at 178-80.

Second, in *Farr v. State*, Farr waived his right to present mitigating evidence. 621 So.2d 1368, 1369 (Fla. 1993). In concluding reversible error occurred when the court failed to consider and weigh all believable, uncontroverted mitigating evidence, this Court noted that at “the time of sentencing the record contained a psychiatric report and presentence investigation report,” but the court “ignored the mitigating evidence contained in” those reports. *Id.* at 1369-70.

E. In suggesting that a trial court’s failure to consider and weigh all believable, uncontroverted mitigating evidence should be reviewed for fundamental error unless the defendant had proposed and presented the evidence at issue in the trial court, this Court overlooked or misapprehended that a trial court’s duty to consider and weigh all believable, uncontroverted mitigating evidence applies with no less force when a defendant argues in favor of death and even asks the court to not consider mitigating evidence.

Again, this Court suggested that a trial court’s failure to consider and weigh all believable, uncontroverted mitigating evidence should be reviewed for fundamental error unless the defendant proposed and presented the believable, uncontroverted mitigating evidence at issue in the trial court. *Craft*, slip op. at 22. But this Court has declared:

“[W]e expect and encourage trial courts to consider mitigating evidence,

even when the defendant refuses to present mitigating evidence.” *Muhammad v. State*, 782 So.2d 343, 363 (Fla. 2001). This Court has “repeatedly emphasized the duty of the trial court to consider *all* mitigating evidence ‘contained anywhere in the record, to the extent it is believable and uncontroverted.’” *Id.* (quoting *Farr v. State*, 621 So.2d 1368, 1369 (Fla. 1993)). This requirement “applies with no less force when a defendant argues in favor of the death penalty, and even if the defendant asks the court not to consider mitigating evidence.” *Id.* (quoting *Farr*, 621 So.2d at 1369).

Fitzpatrick v. State, 900 So.2d 495, 523 (Fla. 2005).

II. If the overlooked or misapprehended points of law are properly considered, Craft’s death sentence should be reversed and this case should be remanded for—at a minimum—reevaluation of the mitigating evidence and sentence.

This Court’s decision to affirm Craft’s death sentence necessarily depended on this Court’s conclusion that the trial court’s conclusion to assign the same slight weight to the “childhood trauma” mitigating circumstance that it assigned to the “good behavior during trial” circumstance was supported by competent, substantial evidence. But the evidence was simply not sufficiently relevant and material that a reasonable mind would accept it as adequate to support the court’s conclusion.

This Court’s decision to affirm Craft’s death sentence also necessarily depended on this Court’s conclusion that no reversible error occurred in connection with the court’s broader consideration of the mitigating evidence. But the court failed to affirmatively show that all believable, uncontroverted mitigating evidence had been considered and weighed. Further, the court provided absolutely no analysis in support of any finding that believable, uncontroverted evidence was not mitigating

based on the unique facts of the present case.

Finally, at least considered cumulatively, the court's errors—in assigning the same slight weight to the “childhood trauma” circumstance that it assigned to the “good behavior during trial” circumstance, and in failing to affirmatively show all believable, uncontroverted mitigating evidence had been considered and weighed—were not harmless. *See* Reply Brief pp. 19-24. As a result, Craft's death sentence should be reversed and this case should be remanded for—at a minimum—reevaluation of the mitigating evidence and sentence.

Conclusion

This Court overlooked or misapprehended the following points of law:

- Competent, substantial evidence is evidence sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached;
- Trial courts have the responsibility to affirmatively show that all possible mitigating evidence has been considered and weighed;
- A trial court must provide at least some analysis in support of its findings related to the mitigating evidence;
- In *Robinson* and other similar cases, the defendant had not proposed and presented the believable, uncontroverted mitigating evidence at issue in the trial court; and

- A trial court's duty to consider and weigh all believable, uncontroverted mitigating evidence applies with no less force when a defendant argues in favor of death and even asks the court to not consider mitigating evidence.

This Court should grant rehearing, withdraw its opinion of November 19, 2020, and issue a revised opinion reversing Craft's death sentence and remanding this case for—at a minimum—reevaluation of the mitigating evidence and sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished electronically via the Florida Courts E-filing portal to William David Chappell, Assistant Attorney General, Capital Appeals Division, and by U.S. Mail to Appellant, Robert Craft, #C00181, Union C.I., P.O. Box 1000, Raiford, FL 32083, on this 4th day of December, 2020.

Respectfully submitted,

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