

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC23-190**

DONALD DAVID DILLBECK

Appellant,

v.

STATE OF FLORIDA

**CAPITAL CASE
DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
FEBRUARY 23, 2023**

Appellee.

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**NOTICE OF FILING SECOND SUPPLEMENTAL APPENDIX
IN SUPPORT OF FOURTH SUCCESSIVE MOTION FOR
POSTCONVICTION RELIEF**

Appellant Donald David Dillbeck, through undersigned counsel, provides notice of the filing of the attached second supplemental appendix in support of the Fourth Successive Motion for Postconviction Relief currently on appeal before this Court. The second supplemental appendix includes the newly acquired signed declaration of Bobbie Harsh regarding Mr. Dillbeck's erratic and bizarre mental state while he was in county jail during the proceedings related to his 1979 conviction. See Attachment A.¹

¹ Under Fla. R. Crim. P. 3.851(e)(2)(C), Mr. Dillbeck provides the following contact information for Harsh as a witness in support of the claims raised in his Rule 3.851 Motion: Roberta Harsh, 4140 Madison Ave., Ft. Myers, FL 33916, 239-694-7512. For clarity, this notice will refer to her as Bobbie Harsh, which is the name she prefers.

On January 30, 2022 Mr. Dillbeck filed the Fourth Successive Motion for Postconviction Relief raising a claim regarding his prior 1979 conviction which was used as an aggravating factor in his sentence of death, for which he faces an imminent execution. In the claim, Mr. Dillbeck raised two subclaims based on newly discovered evidence regarding his bizarre actions and mental state at the time of the crime. The circuit court denied the claim and Mr. Dillbeck has appealed that order to this Court.

In 1979, Bobbie Harsh worked at the Public Defender's Office in Ft. Myers, Florida. Att. A. Her responsibilities "included nearly daily visits to the jail to meet with inmates." *Id.* She recalls meeting with Mr. Dillbeck several times while he was housed in jail. "Mr. Dillbeck struck [her] as not being all there mentally. He was off." *Id.* Sometimes their conversation would be normal; "other times it was like he had never seen me before. Like I was a stranger." *Id.* Ms. Harsh regularly observed Mr. Dillbeck's erratic behavior throughout his pre-plea incarceration:

5. Mr. Dillbeck's behavior was erratic. At times, he was hyper, jumping around, and bouncing off the walls. Other times he would be non-responsive and just stare off into space, like he was staring into the stars.
6. He also had dramatic mood swings. Sometimes when I would meet with him, he would be all smiles. Next time I would see him he would be very angry. I never knew what I was going to get.

Id. She “could never figure out what was going on in his head” and others “had a similar experience with Mr. Dillbeck. No one could figure out what was going on with him mentally.” *Id.* This newly discovered information is consistent with other third-party witness accounts of Mr. Dillbeck’s mental state during this time and strongly supports the findings of Dr. Crown and Dr. Toomer regarding Mr. Dillbeck’s diminished capacity, insanity, and incompetency (PCR5 774-86).

For the foregoing reasons, Mr. Dillbeck respectfully provides notice of the attached appendix in support of his request that this Court vacate the circuit court’s order and remand the case for further proceedings regarding Claim 2 raised in his Fourth Successive Motion for Postconviction Relief.

Respectfully Submitted,

/s/. Baya Harrison
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by electronic service to all counsel of record on this 14th day of February, 2023.

/s/ Linda McDermott
LINDA McDERMOTT

ATTACHMENT

State of Florida

County of Lee

Declaration of Roberta Lynn Harsh

I, Roberta Harsh, hereby state the following as true and correct:

1. My name is Roberta Harsh, I go by Bobbie. In April of 1979 I worked for the Public Defender's Office in Ft. Myers, FL. Prior to working for the PD, I was a Deputy Sheriff for the Lee County Sheriff's Office.
2. I knew Deputy Lynn Hall personally as I had worked with him during my time at the Sheriff's Office.
3. I recall Donald Dillbeck. I met with him numerous times during the period he was housed at the Lee County Jail. My responsibilities at the PD's Office included nearly daily visits to the jail to meet with inmates who requested to speak with someone from the office. Additionally, I was tasked with meeting with inmates if information was needed from them or something needed to be given to or relayed to them.
4. Mr. Dillbeck struck me as not being all there mentally. He was off. As previously mentioned, I met with him numerous times. Sometimes our conversations would be normal. Other times it was like he had never seen me before. Like I was a stranger. I could never figure out what was going on in his head.
5. Mr. Dillbeck's behavior was erratic. At times, he was hyper, jumping around, and bouncing off the walls. Other times he would be non-responsive and just stare off into space, like he was staring into the stars.
6. He also had dramatic mood swings. Sometimes when I would meet with him, he would be all smiles. Next time I would see him he would be very angry. I never knew what I was going to get.
7. I recall from office talk; that others had a similar experience with Mr. Dillbeck. No one could figure out what was going on with him mentally.

Further Declarant Sayeth Naught.

Roberta Lynn Harsh

Roberta Lynn Harsh

02/13/2023

Date