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IN THE CIRCUIT COURT OF THE STATE OF FLORIDA
FOR THE SECOND CIRCUIT IN AND FOR LEON COUNTY

CROSLEY ALEXANDER GREEN, DC #902925

Petitioner.

v.

CASE NO. ______________

FLORIDA COMMISSION ON OFFENDER REVIEW

Filed pursuant to Fla. R. App. Proc. 9.100(f)

Respondent.

_______________________________________/

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

Pursuant to Florida Rule of Civil Procedure 1.630 and Florida Rules of Appellate Procedure 9.100 and 9.220, Petitioner, Crosley Green, respectfully submits this appendix of records to accompany his Petition for Writ of Mandamus compelling the Florida Commission on Offender Review to compute his presumptive parole release date (PPRD) in compliance with the law and to begin the EPRD process immediately.

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2024, I electronically filed this Appendix to Petition for Writ of Mandamus with the Clerk of the Court by using the Court's Electronic Filing System, which will serve Rana Wallace, General Counsel, Office of General Counsel, Florida Commission on Offender Review, 4070 Esplanade Way, Tallahassee, FL 32399-2450; ranawallace@fcor.state.fl.us; Mark Hiers, Assistant General Counsel,Florida Commission on Offender Review, 4070 Esplanade Way, Tallahassee, Florida 32399-2450, MarkHiers@fcor.state.fl.us

/s/ Vincent J. Galluzzo
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Florida Bar Number 86472
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01 Track 1 (1)
Crowell & Moring LLP
March 9, 2023
Transcript by TransPerfect

[00:00:00]

FEMALE 1: Item 11, Page 5, Crosley Green. Anyone here in support of the inmate? Alright. We'll hear from the opposition. This is an initial interview that occurred on August the 12th at Hardee CI. The investigator is recommending a presumptive parole release date December the 2nd, 2074. Let me just state for the record before you get started. This is the commission's first involvement with the case. He is just now serving that minimum mandatory. And we are required by law to review the case, determine the risk factors as well as any mitigating circumstances, or even aggravations in this case, and determine what the presumptive parole release date would be. Also, to determine the next interview. So, you'll have those two pieces of information before you leave today. We are not here to consider parole. We are here to establish the date. So, we'll be glad to hear from you. Just give us your names for the record.

KIM: My name is Kim Landers. Thank you for giving me an opportunity to give a statement that hopefully will keep Crosley Green behind bars for the duration of his life. I also thank my family for all the love and support they have given me through this horrible time and many rehashings through the media of the nightmare that I endured April 3rd, 1989. I attended many court dates, spent many years of my life having to relive nightmares that occurred in 1989. I've tried to forget the horrible things that happened that night, but it still haunts me today and it doesn’t make it any easier that I've had to endure many [INDISCERNIBLE]. My father had a conversation with me before I picked anyone out of the photo lineup, and he was very adamant that I do not choose anyone if I am not 100% sure who committed the crime on that [INDISCERNIBLE] night. Every time I feel I am finally able to move on with my life, it is rehashed through the media and I relive the nightmare over and over again. To this day, Crosley Green took a healthy man's life and innocence over money and still to this day he cannot admit to the truth. He tries to claim his innocence but knows that he committed the crimes for which he is in prison. I know God will have the last say and he will have to answer to him. I have endured many sleepless nightmares and spent many nights sleeping at the foot of my parent's bed because of the horrific events I went through on that night. I always look over my shoulder to ensure my surroundings are safe. I had a horrible feeling something wasn’t right. I regret that I did not follow my gut instinct when Crosley Green passed the truck the first time. I had a horrible feeling something wasn’t right. I thank God every day I was fortunate enough to get away and that he did not get a chance to do anything further to me. It sickens me every time I think of what his intentions would have been if Chip did not have his gun. I am thankful to Chip that he had risked his life to save mine. Why couldn’t he have just taken the money and left? Instead, he took Chip's life. I am very angry he has used the media to try to manipulate people to think he is innocent. He is a horrible person and does not deserve to see the light of day. Chip never got to enjoy the many things he could have done with his family since his life was shortened over a senseless act. This is a person who committed such heinous and senseless crime, take someone's life in the process, and then was originally sentenced to death. If not for a technicality in reference to another crime he previously committed in the State of New York, he would still be on death row. Throughout the lengthy appeal process, the only part of the trial that found an error in was the penalty phase. In my opinion, that man committed a crime worthy of being put on death row and should never walk the streets again as a free man, especially if his guilt has never been addressed by the appellate court. He should never be given the opportunity

to walk the streets again as Chip lost his ability over 26 years ago. Crosley instilled a fear in me that took many years to overcome, and the same fear will return the instant he is released from prison. I truly believe he remains a danger to society and should never be given the opportunity to hurt me or anyone else in the future. Crosley had a chance to be a law-abiding citizen prior to his current incarceration, but chose to be a career criminal, and in the end, a coldhearted murderer. The man lacked the necessary skills to be a productive part of society prior to this murder and the prison system has definitely not instilled these skills over these years. There is absolutely no reason to believe at this point Crosley Green would be anything other than what he has always been, a complete menace to society. I plead to the board to keep Crosley Green incarcerated for the entirety of his life.

FEMALE 1: Thank you. Do you wish to speak, sir?

MALE 1: No.

FEMALE 1: Okay.

DEBBIE DAVIS: Morning. I'm Debbie Davis representing state attorney for [INDISCERNIBLE] with the 18th circuit. On the night of April 3rd, 1989, victims Charles Flynn and Kimberly Hallock-Landers were parked in a vehicle at Holder Park. Mr. Flynn exited his vehicle and was confronted by Inmate Crosley Green, who was armed with a firearm and ordered him to the ground.

[00:05:00]

Inmate Green told Mr. Flynn he wanted his money and his truck and then he used a shoelace to tie Mr. Flynn's hands behind his backfiring his gun while doing so. He took Mr. Flynn's wallet, handed it to Kim, asked her to count the cash, which totaled $185. She exited the truck to give him the money. He ordered both to the back of the truck and Inmate Green drove them to a desolate area in the orange groves. Inmate Green pulled Ms. Hallock away from the truck and held a gun to her head. At the same time, Mr. Flynn retrieved his gun from the side of his vehicle, ran to the rear of the vehicle, and fired it at Inmate Green from behind his back because his hands were still tied. Inmate Green let go of Ms. Hallock and she ran back inside the truck hearing an exchange of gun fire as she drove away to seek help. Ms. Hallock escorted deputies back to the area where they did locate Mr. Flynn barely alive, hands still bound behind his back. Mr. Flynn was transported to the hospital where he died from a gunshot wound to the chest. Inmate Green committed multiple separate offenses that night with use of a firearm causing not only death to Mr. Flynn but psychological trauma to the surviving victim, Kim Hallock. In fact, he fled the area to South Carolina after committing these crimes and was arrested two months later. He has demonstrated an escalating pattern of criminal conduct throughout his entire adult life. In fact, in 1977 he was convicted of an armed robbery and sentenced to prison. He was paroled in 1978 and violated that parole just seven months later and ended up [INDISCERNIBLE]. Since being incarcerated, Inmate Green has not attended any classes, nor has he earned any certificates. The circumstances of this offense were so serious we feel it is in

the best interest of society that he remains incarcerated for the maximum time allowed by law. We are asking for a seven-year [INDISCERNIBLE]. Thank you for your consideration.

FEMALE 1: Thank you very much. Appreciate you being here. Commissioners, any comments or questions? Commissioner [PH] Conrad, will you score the case?

FEMALE 2: Yes. This is the scoring of Case Number 89-004942 count one, murder first degree during commission of felony. I agree with the commission investigator's offense severity. This is a level six capital felony.

FEMALE 1: I agree.

MALE 1: Agree.

FEMALE 2: I agree with the Salient Factor Score of seven.

MALE 1: Agree.

FEMALE 1: Agree.

FEMALE 2: I agree with the matrix time range of 240 to 300. I will set it at 300.

FEMALE 1: I agree.

MALE 1: Agree.

FEMALE 2: I have three aggravating factors. The first one is the scored offense and broad use of a firearm, further PSI or 60 months.

FEMALE 1: Agree.

MALE 1: Agree.

FEMALE 2: Multiple separate offence Case Number 89-004942 counts two and three, robbery with a firearm. I have zero since they're the underlying felonies.

FEMALE 1: I agree.

MALE 1: I agree.

FEMALE 2: Multiple separate offense Case Number 89-004942 counts four and five, kidnapping, I have 240 months per account. Gives a total of 480 months.

FEMALE 1: I agree.

MALE 1: I agree.

FEMALE 2: [INDISCERNIBLE]?

MALE 1: I don't have any additional.

FEMALE 1: I don't either.

FEMALE 2: I show 840 months.

MALE 1: Agree.

FEMALE 1: Agree.

FEMALE 2: I agree. The time begins dated June 2nd, 1989.

FEMALE 1: Agree.

MALE 1: Agree.

FEMALE 2: And that yields a PPRD date of June 2nd, 2059.

FEMALE 1: Agree.

MALE 1: Agree.

FEMALE 2: I have a seven-year re-interview date of June 2022 and my reasons for the extended interview are use of a firearm, multiple separate offenses, reasonableness to others, and I did consider mitigation, but he hasn't done any programs.

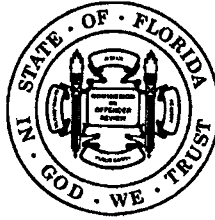
FEMALE 1: And I agree.

MALE 1: Agree as well.

FEMALE 1: Thank you very much. We have established the date to be June 2nd, 2059. We've also assigned a seven-year interview. Again, thank you for being here. I know it's difficult. The next case is Item—

[00:08:56]

FLORIDA COMMISSION ON OFFENDER REVIEW



ORDER ON INITIAL INTERVIEW

This case came before the Florida Commission on Offender Review on **9/23/2015** for consideration of setting the initial presumptive parole release date for inmate **Green, Crosley**, DC# **902925** at **Hardee C.I.**

The investigator recommended a presumptive parole release date of **12/02/2074**.

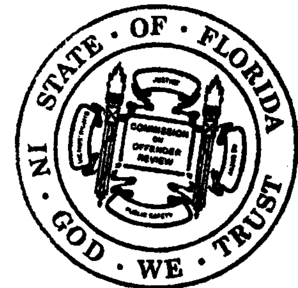
Having considered the Department of Corrections' and the Florida Commission on Offender Review's records, the Commission Investigator's recommendation, as well as any statements made in support or in opposition at the **9/23/2015** public meeting, the Commission hereby:

Sets the presumptive parole release date at **6/02/2059** based on the following objective parole guideline computations:

1. Offense Severity: **Level 6** Degree: **Capital Felony** Offense:
   Offense: **CT. I, Murder First Degree During the Commission of Felony** Case #: **89-004942**
2. Salient Factor Score: 1=2, 2=2, 3=2, 4=1 5=0, 6=0, TOTAL 7 or RCF ☐.
3. Matrix Time Range: **240-300** Set at: **300 months**
4. **Aggravating/Mitigating Factors *(Explain each with source)*:**
   1. The scored offense involved the use of a firearm, per the Pre-Sentence Investigation **60 months**
   2. Multiple separate offense case#89-004942, Ct. II & Ct. III, Robbery with a Firearm **0 months**
   3. Multiple separate offense case#89-004942, Ct. IV & Ct. V, Kidnapping, 240 months per count totaling **480 months**
5. Time Begins Date: **6/02/1989**
6. Total Months for Incarceration: **840**

The Commission sets the **subsequent** interview for **June, 2022** based on: **the use of a deadly weapon; to-wit: a firearm, multiple separate offenses and any release would pose an unreasonable risk to others.**

During the scoring of this case the Commission did consider mitigation



Certified and mailed by [signature] Commission Clerk, this **29th** day of **September, 2015**.
Copy to visitors notified (5) rnw

MH

FLORIDA COMMISSION ON OFFENDER REVIEW

CROSLEY GREEN

New Information Hearing

Subsequent Interview Hearing

Tallahassee, Florida

June 21, 2023

Commissioner Melinda N. Coonrod, Chairman

Commissioner Richard D. Davison, Vice Chair

Commissioner David A. Wyant, Secretary

1 MADAM CHAIR: Okay, so we'll go the subsequent, which was my item
2 19, so on Crosley Green.
3 MR. MACK: David Mack, parole specialist.
4 MR. GALLUZZO: Vince Galluzzo, from Crowell and Moring.
5 MR. MACK: Commissioners, I want to lay out-
6 MADAM CHAIR: One moment. I'm sorry, one second, I just want to
7 announce that I just have, uh- okay. Alright, this is on the docket as
8 listed as new information, so I'm sorry, you may go ahead.
9 MR. MACK: Good morning, Commissioners. I want to lay out the
10 plan for our presentation and the way [INDISCERNIBLE] will follow, to
11 the three separate issues that we're going to address. The first issue
12 is, that pursuant to Rule [INDISCERNIBLE] administrative parole 23-
13 21.013(3) that deals with when an inmate exit the system from
14 incarceration, and he's out, the way that Mr. Green is, that when he
15 returns, the Commission should reset his presumptive parole release
16 date, per that Rule. Counsel of record will speak to that. The second
17 issue we'll deal with, it will be the second deal with the time bar
18 issue as I discussed with both of you, both briefly, Commissioners,
19 regarding the administrative appeal that we had filed. That will be the
20 second issue. The third issue will be why we believe that both the F
21 weapon and the two counts of kidnapping should be removed per the Rule
22 that talks about [INDISCERNIBLE] convictions, that all underlying
23 convictions for those [INDISCERNIBLE] issues should be removed per the
24 Commission Rules. Vince.
25

1 MR. GALLUZZO: Thank you, Mr. Mack, good morning, Commissioners.
2 Thank you for listening to our presentation today. As Mr. Mack said,
3 the first issue I'll take up is related to Rule 23-21, 013, subsection
4 3, and I'll note at the outset that under either that Rule or the
5 discretionary issue that Mr. Mack is going to be addressing, our
6 request for relief is the same, to either set a new or to reduce Mr.
7 Green's PPRD to a date no later than June 2nd, 2023. Rule 23-21, 013,
8 subsection 3 requires that the Commission vacate its September 2015
9 PPRD in this case. And that's because Mr. Green exited the
10 incarceration portion of his sentence from April 2021 to April 2023,
11 while he was on supervised release under the custody not of the state,
12 but of the federal probation office. The Rule states that, in pertinent
13 part, and I'll quote, "The exiting of an inmate from the incarceration
14 portion of the sentence shall vacate the established presumptive parole
15 release date. Any subsequent return to incarceration shall require
16 initial interviews to establish a presumptive parole release date."
17 Now, Mr. Green had exited from April 2021 to April 2023, and recently
18 returned to incarceration as required by the court order. Rule 23-21,
19 013, subsection 3 would require [INDISCERNIBLE] by operation of law,
20 that his September 2015 PPRD is vacated. It no longer exists, and
21 therefore a new one needs to be established. There are exceptions in
22 that Rule, but none of them apply. They apply to, quote, "travel to
23 court proceedings, to act as a witness, or to have a resentencing
24 done," none of which apply here. For the two years of April '21 to
25 April '23, Mr. Green was free to work, free to live with family, have

1 limited free time while he was on supervised release. Again, not by the
2 state but importantly by the federal probation office. It's our
3 position there can be no dispute that Mr. Green in fact exited the
4 incarceration portion of his sentence at that time, and thus there can
5 be no dispute that that Rule apply. This is information that is new, it
6 is not time barred, and it is right to address at this point. We
7 request that the Commission follow that Rule, establish a new PPRD date
8 consistent with the arguments made in our administrative appeal, which
9 Mr. Mack will now address as to the time bar issue.
10 MR. MACK: Commissioners, regarding the time bar issue, do you
11 recall in our initial appeal that we filed, we noted in our appeal that
12 the issue of the time bar will be addressed, because I know the law. I
13 have practiced before this agency for forty years. I just wanted to
14 speak about it, I am a court-appointed expert witness when it comes to
15 parole matters. With the statement in the appeal, we understand that
16 the time of the appeal decision has elapsed, however we urge the
17 Commission to exercise discretionary powers to re-docket Mr. Green's
18 case in the fairness of justice, that this is a clear error against the
19 statute that effects Mr. Green's PPRD date. Then we cited the Rule in
20 this matter. In this case, we made sure that the Commission understood
21 that the Rule is that a case can be re-docketed, pursuant to rule 23-
22 21.05.1, [INDISCERNIBLE] information comes to the Parole Commission
23 that significantly affects the setting of the PPRD date, one
24 Commissioner can dock the case. That was the Rule that we stated in the
25 appeal. That was the discretion. And I can tell you for forty years in

1 practice before this agency, you have, this institution has
2 consistently accepted late appeals. Period. It has occurred. In this
3 instance, we are simply arguing that the best thing to do in this case
4 is re-visit that issue, and allow us to make the merits of the argument
5 that this agency should be about doing impartial decision-making, a
6 decision that is just and fair. And I leave you with this quote by
7 Martin Luther King: "The time is always right to do the right thing."
8 The time is always right to do the right thing, and the right thing
9 here and the fair thing here is that, you know by the merits of your
10 own Rules, that the substantive two kidnapping charges as a part of the
11 present Rule should be removed. Vince will further address those things
12 in the appeal that we filed. Thank you.
13 MR. GALLUZZO: Thank you, Mr. Mack. Now I'll address why the
14 calculation of the operations done in the September 2015 PPRD was
15 incorrect under Rule, but I'll note that whether it's for adjustment of
16 that PPRD or the setting of a new one based on my first argument, those
17 are alternative arguments, the analysis here is the same. The
18 Commission recognized in September 2015, that Mr. Green was convicted
19 of felony murder, and that now they resolved with that felony murder,
20 or as part of that felony murder, there were four other consecutive
21 sentences, two for robbery with a firearm, two for kidnapping. In
22 calculating the aggravating factors, the Commission correctly set at
23 zero months the robbery with a firearm. And I have reviewed the
24 transcripts, and the Commission noted that because that was part of the
25 felony murder. Well, also what was part of the felony murder, as argued

1 by the state, as charged by the state, as found by the jury, and as
2 sentenced by the court, was the kidnapping charges. Instead of setting
3 those at zero, though, the Commission set those at 240 months each,
4 totaling 480 additional months aggravation. There was no reason, there
5 was no good reason to treat the robbery count at zero months,
6 correctly, and the kidnapping counts at 240 months each, incorrectly.
7 The reason is, and we can see in the materials provided with our
8 administrative appeal, that, in part, because of the way the state
9 presented the case to the jury. Right now I'm referring to page 1790 of
10 the trial transcript. What the state argued to the jury in closing
11 arguments is quote, "We've alleged that he shot Charles Flynn Jr., and
12 that he did that during the course of committing robbery or kidnapping.
13 We alleged it in the disjunctive. It could be either. It could be
14 both." The court later at pages 1929 to 1930 repeated similar
15 instructions on the robbery or kidnapping or both as being part of the
16 alleged felony murder, and the later charged felony murder. Not only
17 that, the state linked the robbery and the kidnapping charges together
18 such that they could not be separated from one another, to be
19 considered one as part of felony murder and one not as part of felony
20 murder. I'm referring now to page 1795 of the trial transcript, where
21 the prosecutor argued that quote, The purpose of the kidnapping, quote,
22 "was in order for Mr. Green to facilitate the commission of the crimes
23 that he had started, the robbery." The state thus presented a single
24 criminal transaction to the jury of a felony murder committed in the
25 commission of two robberies and two kidnappings. The jury subsequently

1 found Mr. Green guilty of first-degree murder under this theory, which
2 you can see at page 1977 of the trial transcript. In brief, the issue
3 with the counts 4 and 5 of kidnapping should not have gotten, in a new
4 review, if the Commission were to decide to go that way, should not
5 receive a different treatment than the robbery with a firearm charge.
6 Those also, counts 4 and 5, should be zeroed out for the same reason.
7 Under that Rule 23-21, 010, subsection 2a, says that, underlying
8 offenses of felony murder, consecutive with felony murder, cannot be –
9 I'm sorry – must be used as an aggregating factor but cannot be given a
10 number other than zero. I'm sorry, I referred to the wrong section,
11 it's 23-21, 010, subsection 3. And so, under that, what we would ask is
12 that Mr. Green's PPRD, under our administrative table, be reduced to a
13 date no later than June 2nd, 2023, or if, on my first argument, it is
14 set anew, set for those same reasons, to a date no later than June 2nd,
15 2023.
16 MR. MACK: Just in closing, a couple of issues, because there
17 also was the weapon that was on the case that we argued [INDISCERNIBLE]
18 regarding felony murder has to do with the two kidnapping counts, in
19 terms of our appeal, [INDISCERNIBLE] two kidnapping counts that's on
20 there that we have both addressed. Because we argued that the weapon
21 was an element of the robbery, the robbery was an element of the felony
22 murder, so therefore they [INDISCERNIBLE].
23 MADAM CHAIR: Thanks, gentlemen. Any questions?
24 COMMISSIONERS WYANT AND DAVISON: No.
25

1 MADAM CHAIR: Anyone online wishing to speak in opposition, press
2 *6? I know that we bifurcated this, we heard the victims when we were
3 on the Jacksonville vote. Okay, let's start with Commissioner Wyant on
4 the vote.
5 COMMISSIONER WYANT: Thank you, thank you both for your testimony
6 here today and presentation, and for a matter of record, I will state
7 that I had the opportunity to speak with both of you gentlemen
8 yesterday. As Madam Chair said, these requests for review were placed
9 on the docket as new information, and however upon my review, I find no
10 new information presented. The requests for review are untimely, and I
11 vote to take no action. I make it clear for the record that my vote to
12 take no action is legally distinct from a vote of making no change. As
13 it relates to Rule 23-21.13.iii, upon my review, I do not feel this
14 rule is applicable in this situation.
15 MADAM CHAIR: Commissioner Davison?
16 COMMISSIONER DAVISON: In the matter of Crosley Green, I have had
17 the opportunity to review this case in its entirety. I have previously
18 spoken with Mr. Galluzzo and Mr. Mack extensively, as it relates to
19 their arguments in the Crosley Green case. I have also had the
20 opportunity to consult with legal counsel, and my position is this -
21 don't get excited, Mr. Mack - I agree with Mr. Mack in limited part,
22 and that part is that impartial decision-making, decisions should be
23 just and fair, and I totally agree with that. I also agree with Dr.
24 Martin Luther King, that the time is always right to do the right
25 thing. And so, with that said, I have fully reviewed this case and my

1 position is taken with good reason. I believe that the requests for
2 review were also placed on the docket for new information, and I find
3 no new information presented. So therefore, my vote is to take no
4 action as opposed to making no change, and the two, no action versus no
5 change, are legally distinguishable. And so, I stand by my previous
6 vote and I take no action.
7 MADAM CHAIR: And I voted to agree with my colleagues, and I will
8 say that Mr. Mack, regarding the document that you've presented this
9 morning on Rule 23-21.8013, as of right now, I had legal look into it,
10 and they don't believe it's applicable, but I am giving them the full
11 document after this. If they have a change of mind, then we'll be
12 letting you know, but right now I don't find cause to go under this
13 Rule. So, that is the subsequent. We will go to Item 19 now in Crosley
14 Green.
15 MR. GALLUZZO: I'm sorry, will the Commission indulge us for just
16 a moment? For purposes of clarity, is there any more clarity you can
17 provide on why the Commission believes that subsection 3 of that Rule
18 does not apply? Is there any more, for clarity of the record, that you
19 could provide?
20 COMMISSIONER WYANT: Yeah, I would refer to general counsel.
21 MADAM CHAIR: Yes, we just got it this morning and he's doing a
22 quick review. That is his current opinion, but I'm going to give all of
23 it to the general counsel and make sure that that is exactly what the
24 ruling on there should be.
25

1 MR. MACK: Commissioner Wyant, Commissioner Davison, Commissioner
2 Coonrod, clearly, clearly, you denied my case on the basis of not new
3 information. I did not [INDISCERNIBLE] the administrative part of it.
4 And they docketed it. We didn't file it as new. We filed it as an
5 administrative appeal that was [INDISCERNIBLE], and they asked you to
6 docket it, to communicate based on the fact that there were errors made
7 in the setting of the date. We didn't say new information, we said
8 you've got the law wrong. And that's why we say that my petition does
9 not state, nowhere in my request, in that administrative appeal, we
10 said we were presenting new information. That was an administrative
11 docking of the new information, not the petition that we filed. We
12 filed the petition as an administrative appeal that said that it was
13 about the [INDISCERNIBLE] your broad discretionary authority to
14 docketing cases to revisit the setting the presumptive parole release
15 date. We did not do that. That docketing occurred internally. We did
16 not file it as new information. And that is it.
17 MADAM CHAIR: Mr. Mack, I don't mean to cut you off, but we do
18 know that, but...
19 MR. MACK: Okay, I just wanted to say to you, it got denied based
20 on that reason. I'm saying we didn't file it that way. That's a fact.
21 COMMISSIONER WYANT: Madam Chair, just to clarify, the issue we
22 took up was on the full docket, and now we're going to go back to the
23 subsequent?
24 MADAM CHAIR: Yes.
25

1 MR. MACK: Okay. I will do a brief introduction, and then Vince
2 will then [INDISCERNIBLE] mitigating factors.
3 COMMISSIONER WYANT: Mr. Mack, before, I need to set it in the
4 proper posture. This is the matter of Crosley Green before the
5 Commission. We have a subsequent interview that was conducted on May
6 10, 2023, at the Central Florida Reception Center. The Commission
7 investigator is recommending no change. Mr. Mack.
8 MR. MACK: Thank you, sir. Commission, dealing with the
9 subsequent interview, I would ask the Commission to consider referring
10 this case to the full Commission for reduction of greater than 60
11 months. Specifically, Commissioners, I hope we would agree, based on
12 evidence and mitigation that Vince will present in this case, counsel
13 of record, that Mr. Green is deserving of a significant reduction of
14 his presumptive parole release date. And we hope that the amount of
15 that reduction will be 432 months. Thank you.
16 MR. GALLUZZO: Thank you, Mr. Mack, and thank you again,
17 Commissioners. This is quite a unique case. It's a case where the
18 Commission doesn't have to guess at whether an inmate will become
19 integrated into society and become a productive member of society on
20 parole. Here we have, through an interesting procedure, real-world
21 evidence, over the course of two years of supervised release, from
22 April 2021 to April 2023, where Mr. Green was by all accounts a model
23 citizen we could all strive to [INDISCERNIBLE]. There can be no better
24 predicter that Mr. Green will continue to be that same model citizen if
25 given the opportunity of parole. I'll walk us through Rule 23-21, 010,

1 subsection 5bii, which are the mitigating factors that the Commission
2 explicitly can consider, although can consider others as well. For two
3 years while on supervised release, with quite a bit more freedom than
4 most inmates will have incarcerated, he was in full compliance with
5 every single one of those conditions for release. This is on top of 30
6 years of exceptional prison record, supported by declarations from
7 corrections officers who vouched for him, stating that they have never
8 done this before. And importantly the declaration from his warden. The
9 former warden at Calhoun Correctional Institution, Heath Holland, who
10 notes that Mr. Green was quote, "a model prisoner," and that Warden
11 Holland mentioned to others that he wished all of their inmates at
12 Calhoun were like Mr. Green. Warden Holland also notes Mr. Green's
13 positive attitude, and that his record as an inmate was unusual in his
14 [INDISCERNIBLE]. For subsection c, the inmate has strong family ties.
15 Mr. Green's entire family is in Titusville, Florida. That's where he's
16 been on supervised release. It's a very close-knit family, and he
17 serves as the patriarch. That's actually where he gets the nickname
18 "Papa," from all the times throughout childhood and in the two years of
19 supervised release, that he knits the family together. While he was on
20 release, he supported his family financially, he goes to regular family
21 gatherings, and he fell in love and got engaged. These are exactly the
22 same strong family ties the Commission can mitigate. Subsection b. The
23 inmate has the availability of extremely strong community resources.
24 While on release, Mr. Green was active in his community, and he was a
25 positive force to those who were around him. Many people in the

community submitted letters on his behalf to the Commission, noting his impact on them, from coworkers, to parishioners, to leaders at his church. He joined church ministry at the Church of Tomorrow as a leader, and he plans to become a deacon if he is paroled. He also has strong community resources from work, which also address the other mitigating factor D, that the inmate has educational skills which make him employable in the community. But Mr. Green isn't just employable in the community. He has particular skills at his employer that he was at for supervised release that make him indispensable to that company. He worked as an advanced machinist supporting the space [INDISCERNIBLE] industry and other high-tech industries. Letters from his employer, the office manager of the company, and even the CEO of a fellow company all speak to his impact on them during his release and his importance to the company. The owner of that company, Mr. Paul Richards, writes in two different declarations, which were submitted to the Commission, that he is a model employee. Quote, "He is very smart and has quickly learned how to operate very complicated machinery." He, quote, "is a hard worker who is dependable and very dedicated." Quote, "He has demonstrated great technical ability," and importantly, quote, "Replacing him would be difficult because he has learned to do some of our hardest jobs." The officer manager, Lisa Ann Fusco, also notes that he was a model employee. And the CEO of another company, who had to interact with Mr. Green, Ms. Patricia LaPoint, even wrote a letter after working with Mr. Green one-on-one for several days, noting his positive willingness to learn attitude and his concern for the safety

1 of his fellow employees. During his release, we were also able to get
2 him a full psychological evaluation, important in this case because it
3 notes a number of things in support of mitigating factors. Like, Mr.
4 Green established a stable residence, supported by his family. He has a
5 large number of social support with family, friends, his legal team,
6 which is far beyond just the two of us standing up here. He has a
7 remarkable ability to cope with difficult circumstances, and he
8 continues to remain a positive outlook in his life, and he particularly
9 excelled in his ability to integrate back into society during his
10 supervised release, and become a contributing member of society. The
11 full psychological evaluation ends with conclusions that I'm just going
12 to quote into the record here because they are so profound. Quote, "Mr.
13 Green is a stable individual who stands out for his positive
14 attributes." Quote, "Mr. Green is deemed to be at low risk of engaging
15 in future violence." Mr. Green, quote, "has sustained a stable
16 lifestyle devoid of violence or rule-breaking behaviors for over 30
17 years. This is reflective of a personality pattern of an individual who
18 is motivated to act responsibly, engage in pro-social behaviors, and
19 respond to stressors in an adaptive and healthy manner." And finally,
20 quote, "Mr. Green presents with positive indicators that he will
21 continue to do well in the community. He is deemed to be at low risk of
22 reoffending or engaging in future violence, and he is expected to
23 respond well to supervision." How special Mr. Green is is even more
24 amazing when you consider the exceptional, challenging circumstances
25 that he was raised in. He was raised in a family that was subject to

1 abuse and neglect, with an alcoholic father who he and his mother beat
2 Mr. Green and their siblings, and in the end, his father killed his
3 mother in a murder-suicide. This left Mr. Green as the peacemaker for
4 the family, and that is how he overcame the violence and deprivation of
5 his childhood. He became that peacemaker. He dedicated himself to
6 supporting his family, and again, that's where he got the nickname
7 “Papa” that he’s had since he was a young man. There are no allegations
8 of violence in his record, except for the instant conviction, and 30
9 years of exceptional prison record, where he was never known to be a
10 disciplinary problem, where he came to faith, real faith, and helped
11 other fellow inmates find their faith, and that he’s been 30 years
12 sober. Importantly and also unique in this case, he’s been a client who
13 is innocent, who has maintained his innocence since day one. We don't
14 want to re-litigate the case up here, that's not the purpose of this
15 Commission. But substantively, this Commission needs to know that the
16 reason Mr. Green was out for two years on supervised release is because
17 a Federal Court in Orlando determined that he had been
18 unconstitutionally convicted, because exculpatory evidence about the
19 conclusions of the first responding police officers to the crime scene
20 pointed a different perpetrator other than Mr. Green. That exculpatory
21 evidence was withheld from Mr. Green and his counsel in violation of
22 Brady v. Maryland and the U.S. Constitution. And while that decision
23 was overturned by the 11th Circuit, Mr. Green’s petition to the U.S.
24 Supreme Court was supported by over 100 amici, by individuals from law
25 professors, to former federal and state prosecutors, to former state

1 supreme court judges and justices, and to organizations to support
2 those in Mr. Green’s shoes. And that's not the only exculpatory
3 evidence discovered after trial. Every witness to testify against Mr.
4 Green at trial has since recanted, testifying under oath that they were
5 pressured into testifying against him for various reasons. Ten alibi
6 witnesses have also been identified, each signing a sworn affidavit
7 that Mr. Green was nowhere near the crime scene on the night of the
8 crime, placing him miles and miles away for the entire night. The
9 unreliable dog tracking evidence comes from the same dog that has been
10 discredited many times since then for making the same exact mistake,
11 that this general-purpose patrol dog, not a trained scent dog, had
12 made. And a complete lack of physical evidence that Mr. Green was even
13 at the crime scene. Plus, the physical evidence being completely
14 inconsistent with the state’s story of the case at trial. For example,
15 a lack of gunshot residue on the decedent’s hands, even though the
16 state argued that there was a gun fight between the perpetrator and the
17 deceased. All of this supports Mr. Green’s continued claims to
18 innocence, and all of this, including all of the mitigating factors,
19 afford a reduction of Mr. Green’s PPRD of the amount that we are
20 requesting of 432 months, which would set his PPRD at a date of, I
21 believe, June 2nd, 2023. Now, with the few seconds we have left, I’ll
22 turn back to Mr. Mack for conclusion, but of course Commissioners, we
23 are here to answer any questions.
24 MADAM CHAIR: Thank you.
25 MR. GALLUZZO: Thank you.

1 MR. MACK: I just [INDISCERNIBLE] ask the Commission to grant our
2 request to report our case to the full Commission to consider a
3 reduction of the 432. Thank you.
4 MADAM CHAIR: Thank you. Alright, we did bifurcate this case and
5 the victims spoke when we were in Jacksonville, and we will move to the
6 vote now, starting with Commissioner Davison.
7 COMMISSIONER Davison: In the matter of Crosley Green, and I've
8 had the opportunity to review this case in its entirety, I have
9 listened very closely to the comments by both Mr. Mack and Mr.
10 Galluzzo. During my discussions with both of them yesterday, I
11 indicated some of my thoughts as it relates to this case. So, in the
12 matter of Crosley Green, my vote is to disagree with the Commission
13 investigator. I have a 60-month reduction, based upon compliance with
14 the rules of the institution as well as his positive conduct while on
15 release, which would set the new PPRD at June 2nd, 2054. I would set
16 this for a three-year review of March 2026. The reasons for the
17 extended interview are use of a deadly weapon, to whit a firearm,
18 multiple separate offenses, and unreasonable risk factors. Commissioner
19 Wyant?
20 COMMISSIONER WYANT: Uh, that is my vote as well..
21 MADAM CHAIR: Alright. Thank you again, gentleman, we appreciate
22 it.
23 MR. MACK: Okay, thank you. One other thing Commissioners, just
24 for the record, this is a complete statement made, may I approach?
25 MADAM CHAIR: Yes.

1 MALE 1: I'm going to go head and put it in the file.

2 MADAM CHAIR: Okay.

3 MR. MACK: This is a complete documentation of the rebuttal to
4 statements that the victim made at the June 7th meeting in
5 Jacksonville.

6 MADAM CHAIR: Alright, I'll make sure that a copy gets to each
7 Commissioner and is placed in the file.

8 MR. MACK: Okay, thank you.

9 MADAM CHAIR: Thank you.

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6 CERTIFICATION
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10 I, Anders Nelson, hereby certify that the foregoing is, to the
11 best of my knowledge and belief, a true and accurate transcription from
12 English to English.
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14
15
16
17
18 ______________________
19 Anders Nelson
20 Senior Director, Transcription
21 TransPerfect Legal Solutions
22
23
24 June 23, 2023
25

I, Anders Nelson, hereby certify that the foregoing document is, to the best of my knowledge and belief, a true and accurate transcription from English to English.

Anders Nelson

Anders Nelson
Project Manager

July 13, 2023

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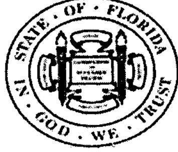
FLORIDA COMMISSION ON OFFENDER REVIEW



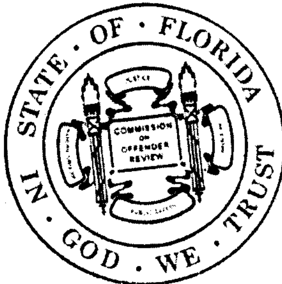
SPECIAL COMMISSION ACTION

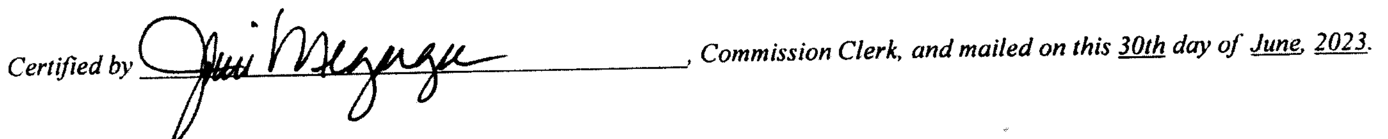
Inmate Name: **Green, Crosley** DC#: **902925**

Institution: **CFRC – East Unit** ESTABLISHED Presumptive Parole Release Date: **06/02/2059**

COMMISSION ACTION: **Administrative Appeal**

At the Commission meeting held on **06/21/2023**, the Commission's decision was to take no action in this case in reference to the Administrative Appeal dated **03/17/2023**.





Certified by ______________________, *Commission Clerk, and mailed on this 30th day of June, 2023.*

1 copy to inmate; 1 copy to institution file; original to Central Office file

1 FLORIDA COMMISSION ON OFFENDER REVIEW
2 CROSLEY GREEN
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4
5 Parole Hearing
6 Tallahassee, Florida
7
8 November 8, 2023
9
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11
12 Commissioner Melinda N. Coonrod, Chairman
13 Commissioner Richard D. Davison, Vice Chair
14 Commissioner David A. Wyant, Secretary
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1 COMMISSIONER DAVISON: Docket Crosley Green. This case is before
2 us to consider a request for rehearing or review. You have [PH] Mr.
3 Mack as well as Mr. Galluzzo present. Good morning, gentlemen. You
4 have up to ten minutes to make your comments in the case of Crosley
5 Green.
6 VINCENT GALLUZZO: Thank you and good morning, commissioners.
7 This is Vince Galluzzo from Crowell & Moring on behalf of Mr. Green.
8 I'll start and then Mr. Mack will finish up for us today. The
9 commission abused its discretion and failed to follow its own rules in
10 2015 when it aggravated Mr. Green's kidnapping convictions on top of
11 his felony murder conviction. The mistake arbitrarily and capriciously
12 added 40 years to Mr. Green's PPRD. Mr. Green is now in his sixties.
13 If the commission does not fix its mistake now, Mr. Green is more
14 likely to die in prison than he is to get a chance at parole. It is
15 one thing to make a mistake. It is quite another to keep a man behind
16 bars until he is nearly 100 years old simply to avoid having to correct
17 that clear mistake. The time to fix that mistake is now. Good cause
18 and exceptional circumstances exist to fix that mistake and to change
19 the PPRD to what it should have been all along in 2014. Some on the
20 commission who were on that 2015 decision may believe that aggravating
21 the kidnapping charges was not a mistake. But the rules are clear that
22 the commission has no discretion in that regard. It cannot treat
23 underlying offenses the way that it did and there is no justification
24 in law or in fact or in the commission's own rules to support the
25 commission's actions to treat the kidnapping counts differently from

1 the robbery counts, which it did correctly zero out. We present to the
2 commission two opportunities to fix that mistake before it costs Mr.
3 Green his life. The first opportunity is in our administrative appeal
4 asking that the commission do as it must and reconsider the 2015 PPRD
5 determination to correctly zero out those kidnapping charges like it
6 did for the robbery charge. If the commission agrees with us, it need
7 not reach the second argument we're presenting, which is that the
8 commission must set a new PPRD for Mr. Green because he exited state
9 custody, state incarceration, and re-entered state custody and state
10 incarceration between April 2021 and April 2023. I'll address the
11 first issue first. At our last hearing, the commission decided to take
12 no action on our administrative appeal because it believed the appeal
13 to be untimely, or at least that was the reason stated on the record.
14 Setting aside as we argue in our papers that the commission cannot take
15 no action under these circumstances, we've since provided the
16 commission with undisputed evidence that our appeal was in fact timely
17 because Mr. Green did not receive notice of the commission's 2015
18 action that would start his appeal clock. The commission also has no
19 evidence to the contrary, as proven by our public records request and
20 lack of any documentation and response. The time bar issue has thus
21 been rebutted and unless there is any dispute from the commission on
22 that matter, I'd like to address the merits. Is there any questions or
23 any discussion to be had on the time bar issue or should I proceed?
24 COMMISSIONER DAVISON: You should proceed. Utilize the ten
25 minutes as you prefer.

1 VINCENT GALLUZZO: Thank you, commissioner. But if there are
2 discussions or questions, that's how I would like to use my time. On
3 the merits, Florida Administrative Rule 23-21.010 requires that all
4 underlying offenses to felony murder shall be zeroed out. The rule in
5 pertinent part states consecutive sentences, plural, for the underlying
6 offenses, plural, in a felony murder conviction shall be used as
7 aggravating factors, but the number of months assessed for these
8 sentences, again plural, shall be zero. Because the rule uses plural
9 versions of sentences and offenses, it contemplates the exact situation
10 we have before us here where there is a felony murder based on multiple
11 underlying offenses, yet it says all of them shall be zeroed out. That
12 means for Mr. Green's case that the kidnapping charges should be zeroed
13 out as much as the robbery charges were. Besides the rule, the facts
14 are also on our side because the facts require treating the kidnapping
15 charges—kidnapping convictions and robbery convictions the same. I
16 previously referred this commission to the trial transcript at Pages
17 1790, 1795, 1929-1930, and 1977. I won't repeat there, but those
18 support the state
19 [00:05:00]
20 charged argued to the jury a felony murder based on kidnapping
21 and robbery that the jury found a verdict in that manner and that Mr.
22 Green was sentenced in that manner. The grand jury indictment, the
23 state's presentation of the case, the jury instructions, the jury
24 verdict, the sentencing, all of those say felony murder by robbery and
25 kidnapping. Additionally at Page 390 of the trial transcript, the

1 state's opening as follows: The murder charge results from the fact
2 that while the defendant was engaged in the commission of these
3 robberies and of these kidnappings or attempting to escape there from,
4 he shot and he killed Charles Flynn, Jr. That is the essential basis
5 for those criminal charges. Moreover, after the trial, during the
6 penalty phase, Page 126 of the state's opening arguing that Mr. Green,
7 "committed this murder not just during the felony of robbery but also
8 during the felony of kidnapping." And here's the important point. And
9 that kidnapping was not just an adjunct robbery. Besides that, the
10 pre-sentencing investigation report is on our side. I understand that
11 some of the commission likes to dig into the facts on the case and
12 while the PSI has faults that we've previously rebutted in papers
13 submitted to the commission, it makes clear that as presented, the
14 robbery happened in one location. Then as part of the robbery, the
15 kidnapping happened to take the victims to another location. And then
16 as part of the robbery and the kidnapping, Mr. Flynn was shot and died.
17 That's described at Pages 2-3 of the PSI. The commissions own office
18 of the general counsel agrees with us further in a docket placement
19 form opinion of counsel in the Taylor Wells case from September 25th,
20 2019 I quote, "After extensive case law research, it appears that in
21 the absence of a designation as to which felony or felonies the trial
22 court or appellate courts consider the underlying felonies, all
23 felonies that occurred as part of the episode which involved the acts
24 causing the death of the murder victim, even if those felonies were not
25 themselves the cause of death, will be considered underlying felonies

1 to a felony murder conviction." For the commission to take action
2 contrary to the rules, contrary to the facts, contrary to the opinion
3 and legal advice of its own attorneys would be an arbitrary and
4 cupreous decision, which is why we ask the commission to fix that
5 mistake now. If the commission agrees with us, of course they need
6 not, you need not, continue, but the second issue is about the exit and
7 reentry. This issue I want to make clear has no timeliness barred, has
8 no timeliness issue. Mr. Green reentered custody incarceration April
9 of 2023. We presented argument on this in June of 2023 within a 60-day
10 period. The last time we were here, we presented argument on how Mr.
11 Green's release from state custody required vacating his 2015 PPRD and
12 setting a new one. The commission stated that advice from counsel was
13 forthcoming, because the rule did not apply under these circumstances.
14 That advice is still forthcoming. And I understand might not have ever
15 been provided. This is quite troubling to the people of the state of
16 Florida, besides Mr. Green, because the people deserve full and
17 adequate explanation of commission decisions, especially when it could
18 mean the difference between life and death for an inmate. Regardless,
19 the rule clearly applies. Mr. Green exited incarceration in April
20 2021. He subsequently returned to incarceration April 2023. The
21 listed exceptions do not apply. He was not returning to a court,
22 federal or otherwise. He was released from prison. The plain language
23 of the Orlando Court's order proves that the rule applies. I will
24 provide the commission with another copy of that order, but Paragraphs
25 1, 3, and 5 of the court's order make very clear that he was being

1 released from incarceration and from custody. At base, whether it's
2 from the first option or the second, we would request that Mr. Green's
3 PPRD be correctly set to June of 2014 as it should have been all along.
4 Mr. Mack?
5 DAVID MACK: Yes. Commission, in wrapping up and to concurrence,
6 you previously have already established that you agreed that it was a
7 felony murder case. The substantive issue that was not dealt with is
8 to remove the kidnapping. Historically, Commissioner Davison,
9 Commissioner Wyant, Commissioner Coonrod, you voted and consistently
10 have voted that when you chose a felony murder case the rule or the
11 underlying felony is aggravators. That has not been disputed because
12 the rules have been black and white and that has been historically what
13 the court has done. The timing issue has been addressed because of the
14 failure of notice.
15 [00:10:00]
16 And the essence of a fair and impartial hearing is fundamental to
17 following the rules. I'm hoping the commission would agree that the
18 rule is black and white. There is not light gray or dark gray in this
19 rule. It is black and white. It is fundamental. You should assess
20 and assign zero to the kidnapping and reestablish his presumptive
21 parole release date. And I hope the commission would acquiesce to that
22 request to do the appropriate reduction of the 540 months in light of
23 the fact that the commission made a modification to Mr. Green's PPRD by
24 reducing by 60 months. When you do the reduction, his PPRD should be
25

1 June 2nd, 2009 and set for an immediate effective interview. Thank you
2 kindly.
3 COMMISSIONER DAVISON: Okay.
4 CHAIRWOMAN COONROD: I have one question. You want the firearm
5 removed as well?
6 DAVID MACK: Yes.
7 COMMISSIONER DAVISON: Is there any testimony in opposition?
8 LINDA HAWKINS: Yes. Good morning, members of the commission.
9 COMMISSIONER DAVISON: Are you Ms. Landers?
10 LINDA HAWKINS: I am. I am Linda [PH] Hawkins, the sister of the
11 deceased victim, Charles Flynn.
12 COMMISSIONER DAVISON: Okay.
13 LINDA HAWKINS: May I move forward?
14 COMMISSIONER DAVISON: Yes. Just to be clear, are Ms. Hawkins
15 and Ms. Landers, are you both on the line? If there is more than one
16 who will be providing testimony, just keep in mind you'll split the
17 time between each of you. If there's only one, then you'll have the
18 entire ten minutes. Again, if you state your name for the record, we'd
19 like to hear from you at this time.
20 LINDA HAWKINS: Okay. My name is Linda Hawkins and I must say
21 that I was taken by surprise upon receiving mail that Inmate Green had
22 requested yet another hearing so soon after the one held earlier this
23 year. At that time when the commission granted a six year reduction of
24 his sentence, I foolishly believed that it would be the end of this
25 journey, at least for three years. Nothing has happened since that

1 hearing and today that will ever change my mind that he is responsible
2 for my brother's murder. We have heard previous testimony that he has
3 been a model prisoner both in prison and on supervised release.
4 However, that does not make him a good person. For example, if he were
5 a good person, he would have turned himself immediately in after the
6 crime, but he chose to go on the lamb and create a manhunt. This does
7 not suggest innocence. Later he bullied his family members into
8 getting witnesses, family and otherwise, to testify in his case recant
9 their testimony. Further he has not expressed any remorse to my family
10 since his conviction. For him and his team to come forward after all
11 these years and allege that this case is similar to other murder cases
12 to affect his detention status is a travesty. He was convicted by a
13 jury of his peers, sentenced to death, resentenced to life, and had the
14 sentence reduced again. Where does this end? My capacity to consider
15 forgiveness for this man is running on fumes at this point. I feel
16 that as though this case will be in my head every day of my life toying
17 with my emotions and feelings. I know that this situation is a two-way
18 street. Victims attempt to gain justice and incarceration for the
19 convicted. And the convicted are always seeking to have ways for their
20 incarceration to be ended. Well let me say this. My brother is dead.
21 Crosley Green murdered him. He needs to pay for that by completing his
22 sentence. My brother wasn't granted a hearing to come back to earth
23 because he didn't deserve to die. His sentence is eternal. May the
24 lord guide your decision. Thank you.
25

1 COMMISSIONER DAVISON: Thank you, Ms. Hawkins. Is there anyone
2 else who would like to speak in opposition at this time? Hearing none,
3 we'll proceed. My position is to take no action. Commissioner Wyant?
4 COMMISSIONER WYANT: Thank you. As it relates to this agenda
5 item, I take no action.
6 COMMISSIONER DAVISON: Madam Chair?
7 CHAIRWOMAN COONROD: Based on what we've done in the past,
8 especially on Taylor Wells, my vote would be to remove the firearm
9 aggravation one, which is 60 months and remove aggravation number three
10 in the amount of 480 months. That would be a total of 540 months that
11 would be removed.
12 COMMISSIONER DAVISON: Thank you. Based upon the actions today,
13 we will take no action.
14 VINCENT GALLUZZO: Commissioners, your indulgence for a moment.
15 [00:15:00]
16 As you may know, there are—bear with me one moment. There are
17 cases from the first district court of appeals, such as the Williams v.
18 Commission, Howard v. Commission cases from 1993 and 2006, each of
19 which require the commission must articulate with specificity the
20 reasons for its decision and identify the information in the complete
21 official record in the case that supports those reasons. Is there any
22 possibility of providing such articulation and reasons other than no
23 action?
24 COMMISSIONER DAVISON: Mr. Galluzzo, I've stated my position.
25 Commissioner Wyant?

1 COMMISSIONER WYANT: I have nothing further.

2 COMMISSIONER DAVISON: Okay. And so, our position today is to

3 take no action. Thank you.

4 VINCENT GALLUZZO: For the record, Commissioner, I just have

5 those papers that I had referred to. May I approach?

6 COMMISSIONER DAVISON: Yes. If you provide them to the clerk.

7 VINCENT GALLUZZO: Of course.

8 CHAIRWOMAN COONROD: Thank you, gentlemen.

9 DAVID MACK: Thank you.

10 VINCENT GALLUZZO: Thank you, Commissioner.

11 COMMISSIONER DAVISON: We will go to the addendum—

12 [00:16:12]

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3 I, Anders Nelson, hereby certify that the foregoing is, to the
4 best of my knowledge and belief, a true and accurate transcription in
5 English.
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14 Anders Nelson
Anders Nelson (Nov 29, 2023 15:18 EST)
15 Anders Nelson
16 Project Manager
17 TransPerfect Legal Solutions
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20 November 28, 2023
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FLORIDA COMMISSION ON OFFENDER REVIEW

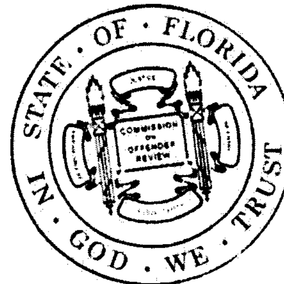
SPECIAL COMMISSION ACTION

Inmate Name: **Green, Crosley** DC#: **902925**

Institution: **Sumter Correctional Inst.** ESTABLISHED Presumptive Parole Release Date: **06/02/2054**

COMMISSION ACTION:

At the Commission meeting held on **11/08/2023**, the Commission's decision was to take no action in this case.



Certified by ______________, *Commission Clerk, and mailed on this 17th day of November, 2023.*

AS

1 copy to inmate; 1 copy to institution file; original to Central Office file

March 17, 2023

Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399

Re: Crosley Green, DC #902925 / Administrative Appeal

Dear Commissioners:

Pursuant to Section 947.173, Florida Statutes, by and though undersigned counsel, inmate Crosley Green (DC # 902925) administratively appeals the September 23, 2015 action by the Florida Commission on Offender Review ("Commission") in which it set Mr. Green's Presumptive Parole Release Date ("PPRD") as June 2, 2059 by inappropriately considering aggravating factors, thereby extending Mr. Green's PPRD by 540 months.

Crosley Green, who is 65 years old, was incarcerated for 32 years, 19 of which were on Florida's death row, before he was released two years ago under conditions of supervision by the Federal Probation Office after a federal court ruled that he had been unconstitutionally convicted. During his incarceration, Mr. Green was a model prisoner, and he has been a model citizen during his supervised release. The federal court ruling in Mr. Green's favor was later overturned, but Mr. Green currently remains under the federal court's conditions of release. It now appears that Mr. Green's PPRD was incorrectly set during his Initial Review and if it had been properly set he would have been eligible for parole in 2014. This appeal seeks the proper calculation of his PPRD.

In support of this appeal, Mr. Green states as follows: On September 5, 1990, Mr. Green was convicted of Felony Murder (Count One), Robbery (Count Two), Robbery (Count Three), Kidnapping (Count Four), and Kidnapping (Count Five). On February 8, 1991, Mr. Green was sentenced to death. Upon resentencing on August 31, 2009, the death penalty was not pursued by

the State and Mr. Green was sentenced to a mandatory 25 years for Count One; he was sentenced to 17 years for Counts Two, Three, Four, and Five to run concurrently against each other and consecutively to Count One.

On September 23, 2015, Mr. Green had his Initial Hearing, at which he was not represented by counsel. The Commission set Mr. Green's PPRD at June 2, 2059, citing the following enumerated aggravating factors totaling 540 months:

1. The scored offense involved the use of a firearm, per the Pre-Sentence Investigation (60 months);
2. Multiple separate offense case #89-004942, Ct. II & Ct. III, Robbery with a Firearm (0 months);
3. Multiple separate offense case #89-004942, Ct. IV & Ct. V, Kidnapping, 240 months per count (480 months).

See Certified Commission Action, September 29, 2015, attached as Ex. A.

In this appeal, Mr. Green challenges aggravating Factors One and Three as improper aggravations that must be struck.[1]

A. Mr. Green's Felony Murder conviction renders the Commission's aggravation for multiple separate offenses of Counts Four and Five Kidnapping improper under Rules 23-21.010(2)(a) and (3) of the Florida Administrative Code and, therefore, his PPRD must be revised.

The Commission may not use improper aggravation in the calculation of an inmate's PPRD. *See, e.g.*, *Bizzigotti v. Fla. Parole & Prob. Comm'n*, 410 So. 2d 1360, 1362 (Fla. 1st DCA 1982) (citing *Moore v. Fla. Parole & Prob. Comm'n*, 289 So. 2d 719 (Fla. 1974)). The administrative rules governing the Commission enumerate specific circumstances in which the Commission may not aggravate the PPRD. Specifically, Rule 23-21.010 of the Florida Administrative Code states, in pertinent part (with emphasis added):

[1] Mr. Green does not challenge Factor 2 because the Commission properly included Factor 2 as an aggravating factor, but extended the PPRD by zero months, as prescribed by Rule 23-21.010(3) of the Florida Administrative Code.

23-21.010 Decisions Outside the Matrix Time Range.
. . .
(2) Information (for example information supporting a count of an indictment that was dismissed as a result of a plea agreement) may be relied upon as aggravating or mitigating circumstances provided it meets the competent and persuasive criteria. However, the following aggravating factors shall not be used:

(a) Any element of the crime

Moreover, the Florida Legislature has explicitly stated that "[f]actors used in arriving at the salient factor score and the severity of offense behavior category shall not be applied as aggravating circumstances." Fla. Stat. § 947.165 (2022).

Specific to Felony Murder, Rule 23-21.010(3) of the Florida Administrative Code states, "consecutive sentence(s) for the underlying offense(s) in a felony murder conviction shall be used as an aggravating factor(s), *but the number of months assessed for these sentences shall be zero*." (emphasis added). Fla. Stat. § 782.04(1)(a)(2) defines Felony Murder as the unlawful killing of a human being:

(1) When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:
…
a. Robbery
b. Burglary,
c. Kidnapping

Here, Mr. Green was charged by Indictment under the general Felony Murder statute, Fla. Stat. § 782.04(1)(a)(2). See Indictment, attached as Ex. B.

At trial, the State's theory of the crime was that there was a robbery and kidnapping that ended in a murder. In its closing argument, the State explained the elements of Felony Murder required that it "prove [Mr. Green shot the gun that killed the victim] during the course of commission of one of two alleged felonies." *T. 1789-91*, attached as Ex. C.

Further, the State argued that the purpose of the kidnapping at gunpoint was "to facilitate the commission of the crimes that he had started, the robbery. He was engaged in the commission of that robbery and/or the attempts to escape from that robbery at the time that he" kidnapped the victims. *T. 1794-95*, Ex. C.

The Court instructed the jury on Felony Murder, *T. 1927-1934*, Ex. C, for which he was found guilty. *T. 1977*, Ex. C.

Because Kidnapping was an element of the crime of Felony Murder in this case, and an element of the crime cannot be used to aggravate the PPRD, the Commission erred by applying aggravating Factor Three (multiple separate offense Case #89-004942, Cts. Four & Five Kidnapping). Therefore, these two aggravating factors must be struck.

B. Aggravating Factor One, use of a firearm, was applied erroneously to calculate Mr. Green's PPRD and must be revised.

Aggravating Factor One, use of a firearm, must be revised because it is an element of the underlying charge of Felony Murder in contradiction to Rules 23-21.010(2)(a) & (3), and separately, is included in the definition of Robbery. For the reasons stated in Section A above, the Commission erred by extending Mr. Green's PPRD by 60 months for Factor One because use of a firearm is an underlying element of Felony Murder.

The Commission did not extend Mr. Green's PPRD for use of a firearm under the Robbery charge. To do so then, or now, would have been/is inappropriate because use of a firearm is part of the definition of Robbery. Robbery is defined as "the taking of money. . . [with] the use of force, violence, assault, or putting in fear," Fla. Stat. § 812.13(1). In *Mattingly v. Fla. Parole & Prob. Comm'n*, the court held the Parole Commission erred in assessing aggravation time for use of a firearm during a robbery because "factors used in the definition of [robbery for] conviction cannot be utilized to aggravate a prisoner's presumptive parole date." 417 So. 2d

1163 (Fla. 1st DCA 1982). Therefore, Factor One must be removed from his PPRD calculation.

C. Mr. Green's PPRD should be revised to June 2, 2014 based on the elimination of the improper aggravating factors.

The Commission must revise Mr. Green's PPRD based on the elimination of these three improper aggravating factors. Factor One extended Mr. Green's PPRD 60 months and Factor Three extended Mr. Green's PPRD 480 months – in total Mr. Green's PPRD was inappropriately extended 540 months. By eliminating these three factors, Mr. Green's PPRD should be revised to June 2, 2014.

Conclusion

Based on the forgoing, Mr. Green respectfully requests that the Commission find good cause to modify his PPRD by 540 months and thereby establish a new PPRD of June 2, 2014. Additionally, the Commission should schedule Mr. Green for an immediate Effective Interview.

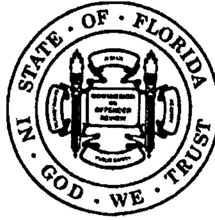
* * *

Respectfully submitted,

Vince J. Galluzzo, Esq.
Keith Harrison, Esq.
Jeane A. Thomas, Esq.
Crowell & Moring, LLP
1001 Pennsylvania Ave, NW
Washington, DC 20004

Exhibit A

FLORIDA COMMISSION ON OFFENDER REVIEW



ORDER ON INITIAL INTERVIEW

This case came before the Florida Commission on Offender Review on **9/23/2015** for consideration of setting the initial presumptive parole release date for inmate **Green, Crosley**, DC# **902925** at **Hardee C.I.**

The investigator recommended a presumptive parole release date of **12/02/2074**.

Having considered the Department of Corrections' and the Florida Commission on Offender Review's records, the Commission Investigator's recommendation, as well as any statements made in support or in opposition at the **9/23/2015** public meeting, the Commission hereby:

Sets the presumptive parole release date at **6/02/2059** based on the following objective parole guideline computations:

1. Offense Severity: **Level 6** Degree: **Capital Felony** Offense:
   Offense: **CT. I, Murder First Degree During the Commission of Felony** Case #: **89-004942**
2. Salient Factor Score: 1=**2**, 2=**2**, 3=**2**, 4=**1** 5=**0**, 6=**0**, TOTAL **7** or RCF ☐.
3. Matrix Time Range: **240-300** Set at: **300 months**
4. **Aggravating/Mitigating Factors *(Explain each with source)*:**
   1. The scored offense involved the use of a firearm, per the Pre-Sentence Investigation **60 months**
   2. Multiple separate offense case#89-004942, Ct. II & Ct. III, Robbery with a Firearm **0 months**
   3. Multiple separate offense case#89-004942, Ct. IV & Ct. V, Kidnapping, 240 months per count totaling **480 months**
5. Time Begins Date: **6/02/1989**
6. Total Months for Incarceration: **840**

The Commission sets the **subsequent** interview for **June, 2022** based on: **the use of a deadly weapon; to-wit: a firearm, multiple separate offenses and any release would pose an unreasonable risk to others.**

During the scoring of this case the Commission did consider mitigation

Certified and mailed by [signature] Commission Clerk, this **29th** day of **September, 2015**.
Copy to visitors notified (5) rnw

MH

Exhibit B

1/4

Not Suitable for Imaging

REDACTED

NO. 89-4942-CF-A-X

IN CIRCUIT COURT
EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA
BREVARD COUNTY

THE STATE OF FLORIDA

VS

CROSLEY ALEXANDER GREEN

INDICTMENT FOR

COUNT I FELONY MURDER (000020)
COUNT II ROBBERY (000219)
COUNT III ROBBERY (000219)
COUNT IV KIDNAPPING (000226)
COUNT V KIDNAPPING (000226)

Found Spring Term, A.D. 1989

Charles W Welsh
Foreman of the Grand Jury

Presented in Open Court and Filed this 20th day of June, 1989

R.C. Winstead, Jr
Clerk

By Karen Rowell D.C.

STATE WITNESSES

AGENT SCOTT NYQUIST
DEPUTY ODELL KISER
KIM HALLOCK
DALE CARLILE
WILLIE HAMPTON

Case # 05-1989-CF-004942-AXXX-XX
Document Page # 55

014713036

TRM dls53

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA

IN THE CIRCUIT COURT OF THE Eighteenth Judicial Circuit of the State of Florida for Brevard County, at the Spring Term thereof, in the year of our Lord one thousand nine hundred and eighty nine, Brevard County, to wit: The Grand Jurors of the State of Florida: inquiring in and for the body of the County of Brevard, upon their oaths do charge that

CROSLEY ALEXANDER GREEN

on the 4th day of April, 1989, in the County of Brevard, and State of Florida, did then and there unlawfully kill a human being, CHARLES FLYNN, JUNIOR, by SHOOTING CHARLES FLYNN, JUNIOR WITH A FIREARM and said killing was committed by CROSLEY ALEXANDER GREEN, while engaged in the perpetration, or in the attempt to perpetrate by force, violence, assault or putting in fear, unlawfully rob, steal and take away from the person or custody of CHARLES FLYNN, JUNIOR, KIM HALLOCK, against THEIR will, MONEY, of SOME VALUE, good and lawful currency of the United States of America, the property of CHARLES FLYNN, JUNIOR, KIM HALLOCK, as owner or custodian, with intent to permanently deprive said owner or custodian of a right to said property or a benefit therefrom, and in the course of committing said ROBBERY, CROSLEY ALEXANDER GREEN, carried and had in HIS possession a "firearm" as described in Subsection 790.001(6), Florida Statutes, contrary to Sections 812.13(1), 812.13(2)(a) and 775.087(2), Florida Statutes, contrary to Section 782.04(1)(a)2, Florida Statutes, and/or did then and there forcibly, secretly or by threat, confine, abduct or imprison another CHARLES FLYNN, JUNIOR, KIM HALLOCK, against THEIR will, and without lawful authority, with intent to commit or facilitate commission of a felony, to wit: ROBBERY or inflict bodily harm upon or terrorize said victims or another person, contrary to Sections 787.01(1)(a)(2), 787.01(1)(a)3, Florida Statutes,

COUNT II

The Grand Jurors of the State of Florida: inquiring in and for the body of the County of Brevard, upon their oaths do charge that in Brevard County, Florida, on the 4th day of April, 1989, CROSLEY ALEXANDER GREEN, did then and there by force, violence, assault or putting in fear, unlawfully rob, steal and take away from the person or custody of CHARLES FLYNN, JUNIOR, against HIS will, MONEY, of SOME VALUE, good and lawful currency of the United States of America, the property of CHARLES FLYNN, JUNIOR, as owner or custodian, with intent to permanently deprive said owner or custodian of a right to said property or a benefit therefrom, and in the course of committing said ROBBERY, CROSLEY ALEXANDER GREEN, carried and had in HIS possession a "firearm" as described in Subsection 790.001(6), Florida Statutes, contrary to Sections 812.13(1), 812.13(2)(a) and 775.087(2), Florida Statutes,

COUNT III

The Grand Jurors of the State of Florida: inquiring in and for the body of the County of Brevard, upon their oaths do charge that in Brevard County, Florida, on the 4th day of April, 1989, CROSLEY ALEXANDER GREEN, did then and there by force, violence, assault or putting in fear, unlawfully rob, steal and take away from the person or custody of KIM HALLOCK, against HER will, MONEY, of SOME VALUE, good and lawful currency of the United States of America, the property of KIM HALLOCK, as owner or custodian, with intent to permanently deprive said owner or custodian of a right to said property or a benefit therefrom, and in the course of committing said ROBBERY, CROSLEY ALEXANDER GREEN, carried and had in HIS possession a "firearm" as described in Subsection 790.001(6), Florida Statutes, contrary to Sections 812.13(1), 812.13(2)(a) and 775.087(2), Florida Statutes,

COUNT IV

The Grand Jurors of the State of Florida: inquiring in and for the body of the County of Brevard, upon their oaths do charge that in Brevard County, Florida, on the 4th day of April, 1989, CROSLEY ALEXANDER GREEN, did then and there forcibly, secretly or by threat, confine, abduct or imprison another CHARLES FLYNN, JUNIOR, against HIS will, and without lawful authority, with intent to commit or facilitate commission of a felony, to wit: ROBBERY and/or inflict bodily harm upon or to terrorize said victims or another person, contrary to Sections 787.01(1)(a)(2), 787.01(1)(a)3, Florida Statutes,

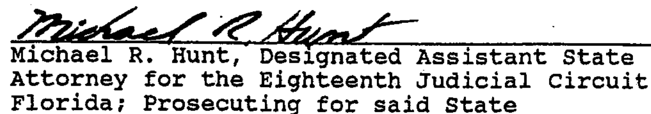
COUNT V

The Grand Jurors of the State of Florida: inquiring in and for the body of the County of Brevard, upon their oaths do charge that in Brevard County, Florida, on the 4th day of April, 1989, CROSLEY ALEXANDER GREEN, did then and there forcibly, secretly or by threat, confine, abduct or imprison another KIM HALLOCK, against HER will, and without lawful authority, with intent to commit or facilitate commission of a felony, to wit: ROBBERY and/or inflict bodily harm upon or to terrorize said victims or another person, contrary to Sections 787.01(1)(a)(2), 787.01(1)(a)3, Florida Statutes,

and against the peace and dignity of the State of Florida.

Foreman of the Grand Jury

I hereby certify that I have, as authorized and required by law, advised the Grand Jury returning the foregoing indictment.



Michael R. Hunt, Designated Assistant State Attorney for the Eighteenth Judicial Circuit Florida; Prosecuting for said State

Exhibit C

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.: 89-4942-CF-A

STATE OF FLORIDA,

Plaintiff,

VOLUME IX

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

August 27 - September 5, 1990
Brevard County Courthouse
Melbourne, Florida

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

This cause came on to be heard at the time and place aforesaid, before the Honorable JOHN ANTOON, II, Circuit Judge, when and where the following proceedings were had, to wit:

APPEARANCES FOR THE STATE

CHRISTOPHER R. WHITE, ESQUIRE
PHILIP B. WILLIAMS, ESQUIRE
Assistant State Attorneys
551 South Apollo Boulevard
Melbourne, Florida 32901

APPEARANCES FOR THE DEFENDANT

JOHN ROBERSON PARKER, ESQUIRE
805 South Washington Avenue
Titusville, Florida 32780

DEPUTY OFFICIAL COURT REPORTER

CYNTHIA A. ANGELL, CSR

COPY

1 those elements that we have to prove to
2 you beyond a reasonable doubt.
3 If there's a fact that came up in
4 this case --
5 Just as an example, how is high is
6 the truck? Is it two feet? Is the
7 floor two feet? Two and a half feet?
8 Three feet? Four feet?
9 -- you find, gosh, there's no
10 evidence that proves that to us one way
11 or the other. That doesn't mean the
12 State's case fails because that's not
13 an element of the crime, of any of the
14 crimes, that we've got to prove how
15 high the floor of the truck is.
16 Now, that fact may reflect on some
17 issue or other fact that more directly
18 proves or disproves an element, but we
19 don't have to prove that fact beyond a
20 reasonable doubt.
21 For first-degree felony murder we
22 have -- it's a different sort of
23 first-degree murder than the normal
24 premeditated murder that you think of.
25 I submit to you, in essence, what the

1 State has to prove here is that, number
2 one, that it was this defendant who was
3 out there that night at Holder Park and
4 then drove that truck with these two
5 victims in it over to the grove and it
6 was this defendant that actually shot
7 Charles Flynn, Jr. That's one portion,
8 or one element, identification, that
9 he's the person.
10 Secondly, that it's actually he
11 who shot the gun that had the bullet
12 that shot Charles Flynn, Jr.
13 Now, the other part of felony
14 murder is a little different. What we
15 have to prove is that he did this
16 during the course of commission of one
17 of two alleged felonies. We've alleged
18 that he shot Charles Flynn, Jr., and
19 that he did that during the course of
20 committing robbery or kidnapping. We
21 alleged it in the disjunctive. It
22 could be either. It could be both,
23 that you find that he was committing at
24 the time that he shot Charles Flynn,
25 Jr., and those are essentially the

1 elements that I think of.

2 Now, we also have to prove that it
3 occurred on April the 4th in the early
4 morning hours or within 24 hours of
5 that which I submit to you there's no
6 question as to that.

7 We also have to prove that it
8 occurred in Brevard County, and I
9 submit to you there's no question as to
10 that so I'm not going to waste a lot of
11 time talking about that.

12 Let's look now at kidnapping.

13 No. Excuse me.

14 Before I do that, let me talk to
15 you about the lessers that you're going
16 to hear about.

17 You're going to hear that there
18 are lesser offenses of first-degree
19 felony murder and that there is
20 second-degree murder and that another
21 one is felony murder in the third
22 degree --

23 You and I have to stop and think
24 about these because they're a little
25 different.

1 Then we get to the kidnapping
2 issue, and there it's a little less
3 direct, I suppose, than robbery.
4 Robbery is a term that we hear a lot of
5 and perhaps I think we all can
6 understand pretty easily. Kidnapping
7 is a little bit more tricky because it
8 requires that a person confine another
9 person or transport another person, and
10 there are some other alternatives that,
11 I believe, will be listed.
12 Here I think what we have is we
13 have evidence that will show that these
14 two people, Kim Hallock and Charles
15 Flynn, Jr., were either confined and/or
16 transported against their will. It was
17 done at gunpoint. Neither of them
18 wanted to be with this defendant.
19 Neither of them wanted him to drive
20 that truck with them in it over to the
21 grove, and neither of them wanted to go
22 to any dark, deserted grove out there,
23 into a citrus grove next to the Indian
24 River, with him, and the only reason
25 that they went was because he made them

1 because their alternative was to
2 possibly get shot.
3 And what was the purpose of doing
4 that? The purpose was in order for him
5 to facilitate the commission of the
6 crimes that he had started, the
7 robbery. He was engaged in the
8 commission of that robbery and/or the
9 attempts to escape from that robbery at
10 the time that he forced them to do
11 these things, and I submit to you that
12 the facts and the elements of those
13 crimes have been shown and proven to
14 you beyond a reasonable doubt as well.
15 Now, the question that you will
16 need to resolve is: What is a
17 reasonable doubt? It could be in your
18 minds right now kind of a magical
19 term. Certainly it's not one that most
20 of you are familiar with and that you
21 apply in your day-to-day life.
22 Fortunately the judge is going to
23 give you some instructions that I hope
24 will allow you to understand what it is
25 and, maybe even more importantly than

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.: 89-4942-CF-A

STATE OF FLORIDA,

Plaintiff,

VOLUME X

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

August 27 - September 5, 1990
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APPEARANCES FOR THE STATE

CHRISTOPHER R. WHITE, ESQUIRE
PHILIP B. WILLIAMS, ESQUIRE
Assistant State Attorneys
551 South Apollo Boulevard
Melbourne, Florida 32901

APPEARANCES FOR THE DEFENDANT

JOHN ROBERSON PARKER, ESQUIRE
805 South Washington Avenue
Titusville, Florida 32780

DEPUTY OFFICIAL COURT REPORTER

CYNTHIA A. ANGELL, CSR

COPY

1 ladies and gentlemen.
2 Let me ask you again. Have any of
3 you heard anything or read anything
4 about this case outside the courtroom?
5 If so, raise your hand.
6 Members of the jury, I thank you
7 for your attention during this trial.
8 Please pay attention to the
9 instructions I'm about to give you.
10 Crosley Alexander Green, the
11 defendant in this case, has been
12 accused of the crimes of Count I,
13 first-degree felony murder; Count II,
14 robbery; Count III, robbery; Count IV,
15 kidnapping; Count V, kidnapping.
16 Because Crosley Alexander Green is
17 accused in Count I of the crime of
18 first-degree felony murder, it is
19 necessary that you be instructed on the
20 different degrees of homicide so that
21 you can determine whether or not a
22 homicide has occurred.
23 First-degree felony murder
24 includes the lesser crimes of murder in
25 the second degree, murder in the third

1 degree and manslaughter, all of which
2 are unlawful.
3 The killing that is excusable or
4 was committed by the use of justifiable
5 deadly force is lawful.
6 If you find Charles Flynn was
7 killed by Crosley Alexander Green, you
8 will then consider the circumstances
9 surrounding the killing in deciding if
10 the killing was first-degree felony
11 murder, second-degree murder,
12 third-degree murder or was
13 manslaughter, or whether the killing
14 was excusable or resulted from
15 justifiable use of deadly force.
16 The killing of a human being is
17 justifiable homicide and lawful if
18 necessarily done while resisting an
19 attempt to murder or commit a felony in
20 any dwelling house in which the
21 defendant was at the time of the
22 killing.
23 The killing of a human being is
24 excusable, and therefore lawful, when
25 committed by accident and misfortune in

1 doing any lawful act by lawful means
2 with usual ordinary caution and without
3 any unlawful intent, or by accident or
4 misfortune in the heat of passion, upon
5 any sudden and sufficient provocation,
6 or upon a sudden combat, without any
7 dangerous weapon being used and not
8 done in a cruel or unusual manner.
9 I now instruct you on the
10 circumstances that must be proved
11 before Crosley Alexander Green could be
12 found guilty of first-degree felony
13 murder or any lesser included homicide.
14 Before you can find the defendant
15 guilty of first-degree felony murder,
16 the State must prove the following
17 three elements beyond a reasonable
18 doubt:
19 1, Charles Flynn, Jr., is dead.
20 2(a) The death occurred as a
21 consequence of and while Crosley
22 Alexander Green was engaged in the
23 commission of a felony, to wit:
24 robbery or kidnapping, or
25 (b) The death occurred as a

1 consequence of and while Crosley
2 Alexander Green was attempting to
3 commit a felony, to wit: robbery or
4 kidnapping, or
5 (c) The death occurred as a
6 consequence of and while Crosley
7 Alexander Green, or an accomplice, was
8 escaping from the immediate scene of a
9 felony, to wit: robbery or
10 kidnapping.
11 3, Crosley Alexander Green was the
12 person who actually killed Charles
13 Flynn, Jr.
14 In order to convict of
15 first-degree felony murder, it is not
16 necessary for the State to prove that
17 the defendant had a premeditated design
18 or intent to kill.
19 I will now inform you of the
20 maximum and minimum possible penalties
21 in this case. The penalty is for the
22 court to decide. You're not
23 responsible for the penalty in any way
24 because of your verdict. The possible
25 results of this case are to be

1 disregarded as you discuss your
2 verdict. Your duty is to discuss only
3 the question of whether the State has
4 proved the guilt of the defendant in
5 accordance with these instructions.
6 The only two lawful penalties of
7 the crime of first-degree felony murder
8 are death and life imprisonment without
9 the possibility of parole for 25
10 calendar years.
11 If you find the defendant guilty
12 of a lesser included crime, I have
13 discretion to sentence the defendant or
14 to place him on probation.
15 In considering the evidence, you
16 should consider the possibility that
17 although the evidence may not convince
18 you that the defendant committed the
19 main crimes of which he is accused,
20 there may be evidence that he committed
21 other acts that would constitute a
22 lesser included crime. Therefore, if
23 you decide that the main accusation has
24 not been proved beyond a reasonable
25 doubt, you will next need to decide if

1 the defendant is guilty of any lesser
2 included crimes. The lesser crimes
3 indicated in the definition of
4 first-degree felony murder are: murder
5 in the second degree with a firearm,
6 felony murder in the third degree,
7 manslaughter with a firearm,
8 manslaughter.
9 Before you can find the defendant
10 guilty of second-degree murder, the
11 State must prove the following three
12 elements beyond a reasonable doubt:
13 1, Charles Flynn, Jr., is dead.
14 2, The death was caused by the
15 criminal act or agency of Crosley
16 Alexander Green.
17 3, There was an unlawful killing
18 of Charles Flynn, Jr., by an act
19 imminently dangerous to another and
20 evincing a depraved mind regardless of
21 human life.
22 An act is one "imminently
23 dangerous to another and evincing a
24 depraved mind regardless of human life"
25 if it is an act or series of acts

1 that:

2 1, a person of ordinary judgment

3 would know is reasonably certain to

4 kill or do serious bodily injury to

5 another, and

6 2, is done from ill will, hatred,

7 spite or an evil intent, and

8 3, is of such a nature that the

9 act itself indicates an indifference to

10 human life.

11 In order to convict of

12 second-degree murder, it is not

13 necessary for the State to prove the

14 defendant had a premeditated intent to

15 cause death.

16 Before you can find the defendant

17 guilty of felony murder of the third

18 degree, the State must prove the

19 following three elements beyond a

20 reasonable doubt:

21 1, Charles Flynn, Jr., is dead.

22 2, The death occurred as a

23 consequence of and while Crosley

24 Alexander Green was engaged in the

25 commission of robbery or kidnapping.

1 3, Crosley Alexander Green was the
2 person who actually killed Charles
3 Flynn.
4 It is not necessary for the State
5 to prove the killing was perpetrated
6 with a design to effect death.
7 Robbery and kidnapping are defined
8 elsewhere in these instructions.
9 Before you can find the defendant
10 guilty of manslaughter, the State must
11 prove the following elements beyond a
12 reasonable doubt:
13 1, Charles Flynn is dead.
14 2, The death was caused by the:
15 (a) act of Crosley Alexander
16 Green.
17 (b) procurement of Crosley
18 Alexander Green.
19 (c) culpable negligence of Crosley
20 Alexander Green.
21 However, the defendant cannot be
22 guilty of manslaughter if the killing
23 was either justifiable or excusable
24 homicide as I have previously explained
25 those terms.

1 Mr. Bedle, has the jury elected a
2 foreman?
3 MR. BEDLE: Yes, sir.
4 THE COURT: Are you the foreman?
5 MR. BEDLE: Yes, sir.
6 THE COURT: Has the jury reached
7 its verdict?
8 MR. BEDLE: Yes, sir.
9 THE COURT: Will you deliver the
10 verdict forms to the bailiff, please.
11 Madam Clerk, will you publish the
12 verdicts.
13 THE CLERK: "We, the jury, find as
14 follows, as to Count I, of the
15 charges: The defendant is guilty of
16 first-degree felony murder. So say we
17 all in Melbourne, Brevard County,
18 Florida, this 5th day of September,
19 1990. Signed, Frederick L. Bedle,
20 Foreperson.
21 "We, the jury, find as follows, as
22 to Count II, of the charges: The
23 defendant is guilty of robbery with a
24 firearm. So say we all in Melbourne,
25 Brevard County, Florida, this 5th day

Vince J. Galluzzo
VGalluzzo@crowell.com
(202) 624-2781 direct

Crowell & Moring LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004
+1.202.624.2500 main
+1.202.628.5116 fax

March 17, 2023

Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399

Re: Crosley Green, DC #902925 / Administrative Appeal

Dear Commissioners:

On behalf of our client, Crosley Green (DC #902925), we submit this Commission on Offender Review (the "Commission") Administrative Appeal ("Appeal") requesting the Commission exercise its discretionary authority under Florida Administrative Code Rule 23-21.0051(1) to re-docket Mr. Green's initial setting of parole date in the interest of justice to address an error in the calculation of Mr. Green's Presumptive Parole Review Date ("PPRD").

Mr. Green is 65 years old and spent 32 years incarcerated, 19 of which were on Florida's death row, before he was released two years ago under conditions of supervision by the Federal Probation Office after a federal court ruled that he had been unconstitutionally convicted.

Our review of Mr. Green's parole process indicates that he had his Initial Hearing on September 23, 2015; counsel was not informed of that hearing. At the hearing, the Commission set Mr. Green's PPRD for June 2, 2059 and Subsequent Interview for June 2022. Because Mr. Green was not incarcerated, but conditionally released to the Federal Probation Office since April 2021, his Subsequent Interview could not be and never has been held. During a recent investigation of his parole status, and in consultation with our parole specialist, David Mack, we learned that the Commission incorrectly considered aggravating factors in setting the PPRD by erroneously using three aggravating factors that were underlying elements of Mr. Green's felony murder conviction. We believe that if the error is corrected, Mr. Green's PPRD would have occurred in 2014.

We understand the time to appeal the Commission's decision has elapsed, however, we urge the Commission to exercise its discretionary power to re-docket Mr. Green's case in the interest of fairness and justice, as this is a clear error that substantially affects Mr. Green's PPRD.

Mr. Green's case for parole is an extraordinary one. During his incarceration, Mr. Green was an exceptional and model prisoner. Three Correctional Officers, each of whom interacted with Mr. Green for over a decade while he was on Death Row, have previously submitted sworn affidavits in support of Mr. Green testifying that he has been a model inmate. (Attached as Ex. 1). Lt. Randolph L. Salle, who had 23 years of correctional experience at the time of his sworn statement and had extensive contact with Mr. Green for 17 years, stated that, "To the extent any modification in Mr. Green's sentence might make him eligible in the future for parole, his record as a model inmate also demonstrates that he should be an ideal candidate for parole. Based upon my experience and extensive contact with Mr. Green, I believe he could become a productive and law-abiding member of society."

Correctional Officer Lt. Willie B. Watson, stated, "I have had contact with thousands of other inmates and have observed them as well. . . Mr. Green always has been and continues to be a model inmate. In this regard, I would rank him at the top of all the inmates I have observed during my career as a Correctional Officer. I should also note that, in my entire career, I have never before offered testimony on behalf of an inmate, but I feel compelled to do so in this case based upon my high regard for Mr. Green."

Moreover, the former Warden at Calhoun Correctional Institution, Heath Holland, submitted a sworn Declaration (Attached as Ex. 2) in support of Mr. Green's release stating:

> "5. Mr. Green has been a model prisoner. I have even mentioned to others that I wished all of our inmates were like Mr. Green. I have known Mr. Green to carry himself with dignity and respect. I have known Mr. Green to be respectful of my staff and to have a positive attitude despite his incarceration.
>
> 6. Mr. Green's record as an inmate is unusual and impressive. I have not seen many disciplinary records that are as clean and unblemished as Mr. Green's. Based on Mr. Green's disciplinary record, his education battery scores, and his overall attitude, we have recommended him for our PRIDE program. That is providing Mr. Green with the skills that should he be released will also help in job placement."

Mr. Green has also been a model citizen during his two years of supervised release. Federal Probation Officer Nicholas Shea, who is assigned to Mr. Green, has reported to the Court that Mr. Green has been in full compliance with his home detention conditions and there are no incidents of non-compliance. Mr. Green has maintained gainful full-time employment for the entire two years of his release. His employer, Paul Richards of PCM Products, Inc., stated in a sworn Declaration (Attached as Ex. 3), "Mr. Green has been a model employee. . .. Given the skills that Mr. Green has developed, it would be a hardship for my company if we had to replace him. Replacing him would be difficult because he has learned to do some of our hardest jobs. He is getting very good at using our complex machinery with tight tolerances and he has demonstrated great technical abilities."

The federal court ruling in Mr. Green's favor was later overturned, but Mr. Green currently remains under the federal court's conditions of release. We are seeking expedited consideration of this Appeal and we appreciate the opportunity to bring this Appeal before the Commission at this time.

Sincerely,

Vince J. Galluzzo, Esq.
Keith Harrison, Esq.
Jeane A. Thomas, Esq.

Exhibit 1

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF Union

I, Randolph L. Salle, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over the age of 18 and am a resident of the State of Florida. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. I am currently employed as a Correctional Officer Lieutenant with the Florida Department of Corrections and am assigned to the Union Correctional Institution ("Union C.I.") in Raiford, Florida. I have been a Florida State Correctional Officer for 23 years and have served that entire time as a Correctional Officer at Union C.I.

3. In 1986, I began my career as a Correctional Officer for the State of Florida when I commenced Correctional Officer training at the facility run by the Florida Department of Corrections in Raiford, Florida. Upon graduation, I became a Correctional Officer 1 and was assigned to serve at Union C.I. In 1993, I earned promotion to Correctional Officer Sergeant and, in 2007, I earned promotion to Correctional Officer Lieutenant, which is the position/rank I currently hold.

4. Most of the time I have spent at Union C.I. has been working at its Death Row housing unit ("Death Row"). In fact, I began working on Death Row in 1993, shortly after it was opened in 1992.

5. My responsibilities as a Correctional Officer at Union C.I. have generally included: the supervision, care, custody, control and physical restraint, when necessary, of inmates. Specifically, my duties have included, but are not limited to the following:

   - supervision of inmates in housing units and those segregated for administrative or punitive measures;
   - instruction to inmates in housekeeping and sanitation;
   - supervision of the issuance of clothing and other personal effects to inmates;
   - periodic patrols of quarters and work areas and initiation of inmate counts at regular and irregular intervals;
   - maintenance of control and discipline including use of physical restraint and restraining devices;
   - prevention of the introduction of contraband into the institution through mail, visitors, or otherwise;
   - monitoring, supervision and screening of inmate visitor traffic;
   - counseling with inmates regarding institutional, domestic or emotional adjustment problems;
   - coordination with Control Room operations;

RS

- participation in search of inmate recreation areas, work areas, and housing units to prevent the introduction of contraband items; and
- maintenance of proper security of inmates being transported.

6. Crosley Green has been an inmate on Death Row at Union C.I. since I commenced my assignment as a Correctional Officer there in 1993. Accordingly, I have known Mr. Green for nearly 17 years and my contact with him during this time period has been extensive.

7. Based upon my extensive contact with Mr. Green in the nearly 17 years in which I have known him, I have been able to closely observe him. Mr. Green has always been and continues to be a model inmate. He has always been well-mannered and I have never known him to be a disciplinary problem while at Union C.I. Mr. Green has always been and continues to be extremely courteous and respectful of Correctional Officers, staff members, and other inmates. He has also volunteered to assist Correctional Officers and staff members at Union C.I. when called upon to do so and I believe he has always been forthright and honest. Based on my extensive contact with Mr. Green, I have formed an opinion regarding his character for truthfulness, which is that Mr. Green is a truthful person.

8. Over the course of my 23-year career as a Correctional Officer with the Florida Department of Corrections, I have had contact with thousands of other inmates and have observed them as well. Again, independently and/or relative to the other inmates I have observed, Mr. Green always has been and continues to be a model inmate. In this regard, I would rank him at the top of all the inmates I have observed during my career as a Correctional Officer. I should also note that, in my entire career, I have never before offered testimony on behalf of an inmate, but feel compelled to do so in this case based upon my high regard for Mr. Green.

9. It is my understanding that there will be a hearing on August 31, 2009 in Mr. Green's case that may impact his current sentence and could result in him being transferred to the general population housing units at Union C.I. or another facility. Based upon my experience and extensive contact with Mr. Green, I believe that any modification of his sentence that would involve such a transfer should neither place Mr. Green or any other inmate at risk nor give rise to any potential disciplinary problems. Again, I have always known Mr. Green to be a model inmate and his characteristics that demonstrate this should remain regardless of the facility or unit in which he is housed.

10. To the extent any modification in Mr. Green's sentence might make him eligible in the future for parole, his record as a model inmate also demonstrates that he should be an ideal candidate for parole. Based upon my experience and extensive contact with Mr. Green, I believe he could become a productive and law-abiding member of society.

11. Since meeting Mr. Green nearly 17 years ago, I have become familiar with some of the facts and circumstances regarding his case. While I understand that Mr. Green was convicted of murder and two counts each of robbery and kidnapping, it is also my

RS

understanding that his conviction was based largely on the testimony of several witnesses and that most of the witnesses who testified against him have since re-canted their testimony. I know that Mr. Green has and continues to maintain his innocence of the charges for which he was convicted. While I will not comment upon his conviction or the underlying evidence, I will simply re-state my personal opinion, based on my extensive contact with him, that Mr. Green is a truthful person.

12. I respectfully request that the Court presiding over Mr. Green's re-sentencing hearing take the foregoing into account in making any determinations regarding his case.

Executed this 28th **day of** August **, 20**09 **in** Union County, Raiford, Florida

Randy Salle

RANDOLPH L. SALLE

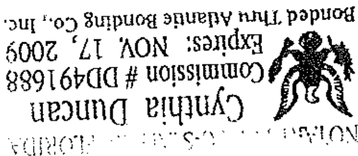
CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF Union

The foregoing document was acknowledged before me this 28th **day of** August **, 20**09 **by RANDOLPH L. SALLE.**

Cynthia Duncan

NOTARY PUBLIC OR DEPUTY CLERK



Cynthia Duncan

[Print, type, or stamp commissioned name of notary or clerk]

RS

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF Union

I, Willie B. Watson, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over the age of 18 and am a resident of the State of Florida. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. I am currently employed as a Correctional Officer Lieutenant with the Florida Department of Corrections and am assigned to the Union Correctional Institution ("Union C.I.") in Raiford, Florida. I have been a Florida State Correctional Officer for nearly 17 years and have served as a Correctional Officer at Union C.I. for approximately 15 years.

3. In November of 1992, I began my career as a Correctional Officer for the State of Florida when I commenced Correctional Officer training at the facility run by the Florida Department of Corrections in Raiford, Florida. I graduated in February 1993 after I successfully completed this training, which involved approximately 480 hours of instruction. Upon graduation, I became a Correctional Officer 1 and was assigned to serve at Union C.I. In 1998, I earned promotion to Correctional Officer Sergeant and, in 2008, I earned promotion to Correctional Officer Lieutenant, which is the position/rank I currently hold.

4. Aside from a brief assignment in Gainesville, Florida, I have spent nearly my entire career – 15 of 17 years – as a Correctional Officer at Union C.I. Most of the time I have spent at Union C.I. has been working at its Death Row housing unit ("Death Row").

5. My responsibilities as a Correctional Officer at Union C.I. have generally included the supervision, care, custody, control and physical restraint, when necessary, of inmates. Specifically, my duties have included, but are not limited to the following:

    - supervision of inmates in housing units and those segregated for administrative or punitive measures;
    - instruction to inmates in housekeeping and sanitation;
    - supervision of the issuance of clothing and other personal effects to inmates;
    - periodic patrols of quarters and work areas and initiation of inmate counts at regular and irregular intervals;
    - maintenance of control and discipline including use of physical restraint and restraining devices;
    - prevention of the introduction of contraband into the institution through mail, visitors, or otherwise;
    - monitoring, supervision and screening of inmate visitor traffic;

WBW

- counseling with inmates regarding institutional, domestic or emotional adjustment problems;
- coordination with Control Room operations;
- participation in search of inmate recreation areas, work areas, and housing units to prevent the introduction of contraband items; and
- maintenance of proper security of inmates being transported.

6. Crosley Green has been an inmate on Death Row at Union C.I. since I commenced my assignment as a Correctional Officer there in 1993. Accordingly, I have known Mr. Green for nearly 17 years and my contact with him during this time period has been extensive.

7. Based upon my extensive contact with Mr. Green in the nearly 17 years in which I have known him, I have been able to closely observe him. Mr. Green has always been and continues to be a model inmate. He has always been well-mannered and I have never known him to be a disciplinary problem while at Union C.I. Mr. Green has always been and continues to be extremely courteous and respectful of Correctional Officers, staff members, and other inmates. He has also volunteered to assist Correctional Officers and staff members at Union C.I. when called upon to do so and I believe he has always been forthright and honest. Based on my extensive contact with Mr. Green, I have formed an opinion regarding his character for truthfulness, which is that Mr. Green is a truthful person.

8. Over the course of my nearly 17-year career as a Correctional Officer with the Florida Department of Corrections, I have had contact with thousands of other inmates and have observed them as well. Again, independently and/or relative to the other inmates I have observed, Mr. Green always has been and continues to be a model inmate. In this regard, I would rank him at the top of all the inmates I have observed during my career as a Correctional Officer. I should also note that, in my entire career, I have never before offered testimony on behalf of an inmate, but feel compelled to do so in this case based upon my high regard for Mr. Green.

9. It is my understanding that there will be a hearing on August 31, 2009 in Mr. Green's case that may impact his current sentence and could result in him being transferred to the general population housing units at Union C.I. or another facility. Based upon my experience and extensive contact with Mr. Green, any modification of his sentence that would involve such a transfer should neither place Mr. Green or any other inmate at risk nor give rise to any potential disciplinary problems. Again, Mr. Green has always been a model inmate and his characteristics that demonstrate this should remain regardless of the facility or unit in which he is housed.

10. To the extent any modification in Mr. Green's sentence might make him eligible in the future for parole, his record as a model inmate also demonstrates that he should be an ideal candidate for parole. Based upon my experience and extensive contact with Mr. Green, I believe he could become a productive and law-abiding member of society.

11. Lastly, although it may not be material and be beyond the scope of the purpose of my testimony, I will add that since meeting Mr. Green nearly 17 years ago, I have become familiar with some of the facts and circumstances regarding his case. It is not uncommon for Correctional Officers and staff members to do so in assessing security issues for inmates. While I understand that Mr. Green was convicted of murder and two counts each of robbery and kidnapping, it is also my understanding that his conviction was based largely on the testimony of several witnesses and that most of the witnesses who testified against him have since recanted their testimony. I know that Mr. Green has and continues to maintain his innocence of the charges for which he was convicted. He remains steadfast in this regard to this day. While I will not comment upon his conviction or the underlying evidence, I will simply re-state my personal opinion, based on my extensive contact with him, that Mr. Green is a truthful person.

12. I respectfully request that the Court presiding over Mr. Green's re-sentencing hearing take the foregoing into account in making any determinations regarding his case.

Executed this 28 **day of** August **, 20**09 **in** Union County, Raiford FL.

Willie Watson

WILLIE B. WATSON

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF Union

The foregoing document was acknowledged before me this 28th **day of** August**, 20**09 **by WILLIE B. WATSON.**

NOTARY PUBLIC-STATE OF FLORIDA
Cynthia Duncan
Commission # DD491688
Expires: NOV. 17, 2009
Bonded Thru Atlantic Bonding Co., Inc.

Cynthia Duncan

NOTARY PUBLIC OR DEPUTY CLERK

Cynthia Duncan

[Print, type, or stamp commissioned name of notary or clerk]

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF Union

I, Jerome Lee, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over the age of 18 and am a resident of the State of Florida. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. I am currently employed as a Correctional Officer Sergeant with the Florida Department of Corrections and am assigned to the Union Correctional Institution ("Union C.I.") in Raiford, Florida. I have been a Florida State Correctional Officer for approximately 18 years and have served as a Correctional Officer at Union C.I. for approximately 17 years.

3. I began my career as a Correctional Officer for the State of Florida in the early 1990s when I commenced Correctional Officer training at the facility run by the Florida Department of Corrections in Raiford, Florida. Upon graduation, I became a Correctional Officer 1 and was assigned to serve at Union C.I. In 2005, I earned promotion to Correctional Officer Sergeant, which is the position/rank I currently hold.

4. I have spent nearly my entire 18-year career with the Florida Department of Corrections as a Correctional Officer at Union C.I. For the past 7 years – since 2003 – I have worked at the Death Row housing unit ("Death Row") at Union C.I.

5. My responsibilities as a Correctional Officer at Union C.I. have generally included the supervision, care, custody, control and physical restraint, when necessary, of inmates. Specifically, my positions while assigned to Death Row have included the following: Yard Officer (2003 – 2004), Housing Sergeant (2005 – 2006), Visiting Park Sergeant (2006 – 2007), Recreation Yard Sergeant (2007 – 2008), and Law Library Sergeant (2008 – present).

6. Crosley Green has been an inmate on Death Row at Union C.I. since I began work at Union C.I. My primary contact with Mr. Green, however, began in 2003 when I commenced working on Death Row at Union C.I. My contact with him during this time period has been extensive.

7. Based upon my extensive contact with Mr. Green, I have been able to closely observe him. Mr. Green has always been and continues to be a model inmate. He has always been well-mannered and I have never known him to be disciplinary problem while at Union C.I. Mr. Green has always been and continues to be extremely courteous and respectful of Correctional Officers, staff members, and other inmates. He has also volunteered to assist Correctional Officers and staff members at Union C.I. when called upon to do so and I believe he has always been forthright and honest. Based on my

JL

extensive contact with Mr. Green, I have formed an opinion regarding his character for truthfulness, which is that Mr. Green is a truthful person.

8. Over the course of my 18-year career as a Correctional Officer with the Florida Department of Corrections, I have had contact with thousands of other inmates and have observed them as well. Relative to the other inmates I have observed, I would rank Mr. Green at the top of all the inmates I have observed during my career as a Correctional Officer.

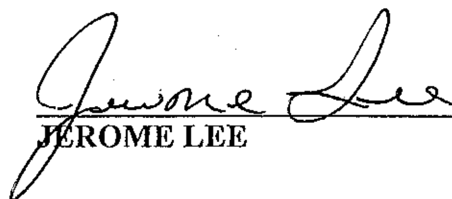
9. It is my understanding that there will be a hearing on August 31, 2009 in Mr. Green's case that may impact his current sentence and could result in him being transferred to the general population housing units at Union C.I. or another facility. Based upon my experience and extensive contact with Mr. Green, I believe that such a transfer should neither place Mr. Green or any other inmate at risk, nor give rise to any potential disciplinary problems. Again, Mr. Green has always been a model inmate and his characteristics that demonstrate this should remain regardless of the facility or unit in which he is housed.

10. To the extent any modification in Mr. Green's sentence might make him eligible for parole in the future, his record as a model inmate also demonstrates that he should be an ideal candidate for parole. Based upon my experience and extensive contact with Mr. Green, I believe he could become a productive and law-abiding member of society.

11. Although it may be beyond the scope of the purpose of my testimony, I will add that since meeting Mr. Green, I have become familiar with some of the facts and circumstances regarding his case. It is my understanding that his conviction was based largely on the testimony of several witnesses and that most of the witnesses who testified against him have since re-canted their testimony. I know that Mr. Green has and continues to maintain his innocence of the charges for which he was convicted. While it may not be my place to comment on the proceedings in his case, I will simply re-state my opinion, based on my extensive contact with him, that I believe that Mr. Green is a truthful person.

12. I respectfully request that the Court presiding over Mr. Green's re-sentencing hearing take the foregoing into account in making any determinations regarding his case.

Executed this 28th **day of** August, **20**09 **in** Raiford, Florida.



JEROME LEE

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF Union

The foregoing document was acknowledged before me this 28th day of August, 2009 by JEROME LEE.

Randall S. Luffman
NOTARY PUBLIC OR DEPUTY CLERK

NOTARY PUBLIC-STATE OF FLORIDA
Randall S. Luffman
Commission #DD788469
Expires: MAY 14, 2012
BONDED THRU ATLANTIC BONDING CO, INC.

Randall S. Luffman
[Print, type, or stamp commissioned name of notary or clerk]

JL

Exhibit 2

DECLARATION OF HEATH HOLLAND

State of Florida, County of Calhoun

I, Heath Holland, the undersigned, do hereby state under penalty of perjury that the following statements are true and correct:

1. I am over the age of 18 and am a resident of the State of Florida.

2. I am currently employed as the Warden at Calhoun Correctional Institution in Blountstown, Florida. I have been the Warden at Calhoun Correctional Institution for one year. I was previously the Warden at Jefferson Correctional Institution in Monticello, Florida, and before that I was Acting Warden and the Assistant Warden at Jackson Correctional Institution in Malone, Florida.

3. As Warden, I am responsible for approximately 350 employees and supervising the daily operations of a correctional facility.

4. Crosley Green has been an inmate at Calhoun since December 18, 2018.

5. To my knowledge, since I have been the Warden at Calhoun, Mr. Green has been a model prisoner. I have even mentioned to others that I wished all of our inmates were like Mr. Green. I have known Mr. Green to carry himself with dignity and respect. I have known Mr. Green to be respectful of my staff and to have a positive attitude despite his incarceration.

6. Mr. Green's record as an inmate is unusual and impressive. I have not seen many disciplinary records that are as clean and unblemished as Mr. Green's. Based on Mr. Green's disciplinary record, his education battery scores, and his overall attitude, we have recommended him for our PRIDE program. That is providing Mr. Green with the skills that should he be released will also help in job placement.

7. To the extent any opinions are expressed in this declaration they are mine in my individual capacity only, not those of the Florida Department of Corrections.

Executed this 18th day of March, 2021.

HEATH HOLLAND

Exhibit 3

DECLARATION OF PAUL J. RICHARDS

State of Florida, County of Brevard

I, Paul Richards, the undersigned, do hereby state under penalty of perjury that the following statements are true and correct:

1. I am over the age of 18 and am a resident of the State of Florida.

2. I am the sole owner of PCM Products, Inc. I have owned the company since 2011.

3. PCM Products, Inc. is an industry leader the business of consumer manufacturing of Photo Chemically Machined (PCM) products and parts, including photo chemical machining, chemical milling, and photo etching. PCM Products provides tight tolerance photo chemical machining for most metals and alloys under 0.100" thick. PCM Products can etch all metals, all alloys and even exotic metals. We provide etching of Copper, Brass, Nickel, Stainless Steel, Titanium, Niobium, Zirconium, Molybdenum, Aluminum, Inconel and Beryllium Copper. PCM Products serves many diverse industries including Aerospace, Military, Medical, Electronics and Automotive markets. We are located in Titusville, FL.

4. PCM Products currently has 17 employees.

5. Crosley Green has been an employee at PCM Products inc. since 3-14-22. He plays many roles at our company and his job responsibilities include photochemical printing, packaging, sheet metal work, and generally whatever we task we ask him to do.

6. Mr. Green has been a model employee. He is very smart and he has quickly learned how to operate very complicated machinery used to manufacture to very tight tolerances. Mr. Green has learned to use our complex equipment to mixing photo chemicals to interact with various types of metal. He effectively operates machines that are difficult to operate, creating complex and tight tolerance metal patterns out of all alloys, all with extremely tight tolerances at a very high quality level necessary to meet the requirements of aerospace certification standard AS9100. The parts that we make go into military equipment, nuclear submarines, satellites, CAT-scan machines, medical devices and implants, and even stenographic machines.

7. Mr. Green is a hard worker who never stops moving when he is at work. He is dependable and very dedicated. Mr. Green will work as long as his Probation Officer will allow. In fact, he used to get in an hour ahead of his start time, just to be available, but his Probation Officer stopped that practice. He is always on time. Though he works hard, he is always eager and willing to do more. He cheerfully and enthusiastically does whatever task is assigned, and it is clear that he really enjoys his work. He is great at following instructions. Mr. Green is well-liked by his fellow employees because he is

considerate, friendly, and has a great sense of humor. We have never had any issues or problems with him at all.

8. Given the skills that Mr. Green has developed, it would be a hardship for my company if we had to replace him. Replacing him would be difficult because he has learned to do some of our hardest jobs. He is getting very good at using our complex machinery with tight tolerances and he has demonstrated great technical abilities.

9. I respectfully request that the Court presiding over Mr. Green's Motion for Continuing the Conditions of his Release take the foregoing into account in making any determinations regarding his case.

Executed this 24 day of September, 2022

Paul J. Richards

Vincent J. Galluzzo
VGalluzzo@crowell.com
(202) 624-2781 direct

Crowell & Moring LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004
+1.202.624.2500 main
+1.202.628.5116 fax

June 21, 2023

Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399

Re: Crosley Green, DC #902925/Administrative Appeal

Dear Commissioners:

On behalf of our client, Crosley Green (DC #902925), we submit this additional information in support of the Commission on Offender Review's (the "Commission") Administrative Appeal ("Appeal") requesting the Commission exercise its obligation to reset Mr. Green's Presumptive Parole Review Date ("PPRD") pursuant to Florida Administrative Code Rule 23-21.013.

Section (3) of that Rule requires "[v]acation of presumptive or effective parole release date [upon]: The exiting of an inmate from the incarceration portion of his sentence, which shall include bond, escape, expiration of sentence, or transfer to a mental health facility," and that event "*shall vacate any established presumptive parole release date*." (emphasis added)

Under Rule 23-21.013(3), the Commission is required to vacate Mr. Green's established PPRD, set by this Commission on September 29, 2015. Mr. Green exited the custody of the Florida Department of Corrections on April 6, 2021, after a federal court (the U.S. District Court for the Middle District of Florida in Orlando) released him from State incarceration and custody into federal supervision following the federal court's finding that Mr. Green's conviction was unconstitutional due to the State's withholding of material exculpatory evidence. (A copy of the federal court's order is attached.) The federal court also held that Mr. Green "has been incarcerated over thirty years and has been described as a 'model prisoner' by the Warden of [his then-current prison]." Further, the court found that "the public has a strong interest in the release of a prisoner whom the Court has found to be incarcerated in violation of the Constitution" and that the State had "failed to establish that [Mr. Green] poses any risk to the public."

The federal court thus granted Mr. Green's motion for his "immediate release" because, among other things, his "custody [was] in violation of the Constitution."

From that point forward, Mr. Green was no longer subject to the "incarceration portion of his sentence" by the State of Florida due to his transfer to federal supervision. Pursuant to the federal court's order, Mr. Green's release was subject to federal supervision with requirements including:

- Being released into the custody of, and residing with, his brother-in-law, except for scheduled medical appointments, religious activities, essential shopping, employment and other activities approved in advance by the probation office;

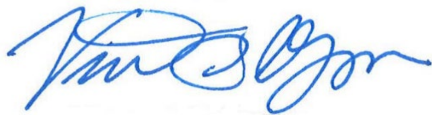
- Being supervised by the U.S. Probation Office for the Middle District of Florida, and continually reporting to that office as directed; and

- Participating in the Home Detention program until released, including the requirement to wear an electronic monitoring device and follow related procedures.

In sum, by the federal court's Order, Mr. Green exited his incarceration and the custody of the Florida Department of Corrections on April 6, 2021 and entered federal custody and supervision. As a result, that exiting of state custody vacates "*any established presumptive parole release date.*"

Mr. Green respectfully requests that the Commission reset his PPRD in accordance with Florida law in a manner consistent with his conviction for felony murder and without separately aggravating his underlying convictions of two counts of robbery and two counts of kidnapping, while also taking into account his record as a model inmate and a productive citizen who was successfully integrated into his community while under federal custody for two years. This is yet an additional reason that his PPRD must be reset to a date no later than June 2, 2023.

Sincerely,



____
Vincent J. Galluzzo, Esq.

September 8, 2023

Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399

Re: Crosley Green, DC #902925 / Proper Consideration of Administrative Appeal and Appeal Based on New Information

Dear Commissioners:

Pursuant to Section 947.173, Florida Statutes, by and though undersigned counsel, inmate Crosley Green (DC # 902925) files this request for three actions by the Florida Commission on Offender Review (the "Commission"): (1) full and proper consideration of his administrative appeal filed on March 17, 2023, supplemented on June 21, 2023, and heard by the Commission on June 21, 2023 (the "Administrative Appeal"), including (2) full and proper consideration of the applicability of Rule 23-21.013(3) to Mr. Green's exiting and reentering of State incarceration; (3) consideration of new information relevant to Mr. Green's Administrative Appeal.

INTRODUCTION AND BACKGROUND

Both of Mr. Green's requests, and his underlying Administrative Appeal, stem from the Commission's September 23, 2015 action (the "2015 Decision") in which it incorrectly set Mr. Green's Presumptive Parole Release Date ("PPRD") to June 2, 2059. Florida law and the facts of Mr. Green's case require that the Commission set Mr. Green's PPRD to a date in 2014, but the Commission incorrectly and unjustly added 45 years to that PPRD by failing to comply with clear requirements of Florida law—specifically Rule 23-21.010(3) of the Florida Administrative Code—and by essentially double-counting Mr. Green's underlying offenses in his felony murder conviction. That Rule requires that the number of months added for underlying offense(s) as aggravating factor(s) in a felony murder conviction "*shall be zero.*" But rather than add "zero"

months to Mr. Green's PPRD for the underlying offenses, the Commission added an unjustifiable 540 months based on those underlying offenses. This grievous mistake essentially added a second life sentence to Mr. Green's PPRD. The law also requires that Mr. Green's PPRD be reset because Mr. Green exited his incarceration from April 2021 to April 2023 and was no longer under the control or custody of the State of Florida and was living in Titusville, Florida. Rule 23-21.013(3) of the Florida Administrative Code thus *requires* that his PPRD be "vacate[d]" and that he be given a new "initial interview to establish a" new PPRD.

Rather than address either of these reasons why the law and facts require that Mr. Green's PPRD be reset, however, the Commission incorrectly rewrote Mr. Green's Administrative Appeal as one based on "new information," unanimously voted to take "no action," and stated, without providing any reasoning, that Rule 23-21.013(3) was "not applicable" to Mr. Green:

> COMMISSIONER WYANT: "these requests for review were placed on the docket as new information, and however upon my review, I find no new information presented. The requests for review are untimely, and **I vote to take no action**. I make it clear for the record that my vote to take no action is legally distinct from a vote of making no change. As it relates to Rule 23-21.13.iii [sic], [exiting of an inmate from the incarceration provision] upon my review, **I do not feel this rule is applicable in this situation**." *Crosley Green New Information Hearing, Transcript*, Tallahassee, Florida, June 21, 2023, at 8:8-14, (attached as Ex. 1).

> COMMISSIONER DAVISON: "I agree with Mr. Mack in limited part, and that part is that impartial decision-making, decisions should be just and fair, and I totally agree with that. I also agree with Dr. Martin Luther King, that the time is always right to do the right thing. And so, with that said, I have fully reviewed this case and my position is taken with good reason. I believe that the requests for review were also placed on the docket for new information, and I find no new information presented. So therefore, **my vote is to take no action** as opposed to making no change, and the two, no action versus no change, are legally distinguishable. And so, I stand by my previous vote and I take no action." *Id.* at 8:21-9:6.

> MADAM CHAIR: "And I voted to agree with my colleagues, and I will say that Mr. Mack, regarding the document that you've presented this morning on **Rule 23-21.8013 [sic], as of right now, I had legal look into it, and they don't believe it's applicable**, but I am giving them the full document after this. If they have a change

of mind, then we'll be letting you know, but **<u>right now I don't find cause to go under this Rule</u>**." *Id.* at 9:7-14.

Even in response to counsel for Mr. Green's request for clarification as to the applicability of Rule 23-21.013(3), the Commission responded as follows:

> COMMISSIONER WYANT: Yeah, I would refer to general counsel.
>
> MADAM CHAIR: Yes, we just got it this morning and he's doing a quick review. That is his current opinion, but I'm going to give all of it to the general counsel and make sure that that is exactly what the ruling on there should be.

Id. at 9:20-24. Neither the Commission not its General Counsel has since provided any explanation of why the plain and clear language of Rule 23-21.013(3) does not apply to Mr. Green.

The Supreme Court of Florida has long recognized that, "[w]hile there is no absolute right to parole, there is a right to a proper consideration for parole." *Moore v. Fla. Parole & Prob. Comm'n,* 289 So. 2d 719, 720 (Fla. 1974). The Commission has not met its duty to properly consider Mr. Green's case, first because Mr. Green's appeal was not based on "new information", but was filed and docketed under Rule 23-21.0051(1), and second because there is no provision Florida law that would allow the Commission to unanimously vote to "take no action." By improperly rewriting Mr. Green's appeal as one of "new information" and voting to "take no action," the Commission essentially abstained, making no decisions as to the substance of Mr. Green's appeal—a course of action not permitted by Florida law. Accordingly, Mr. Green respectfully requests that his appeal of his PPRD—including both bases for the resetting of his PPRD—be given full proper consideration.

Finally, in the event that a majority of the Commission should determine not to exercise its discretion to review Mr. Green's appeal as untimely, Mr. Green submits new information in *this* request for the Commission's full and proper consideration regarding the timeliness of his Administrative Appeal of the 2015 Decision. In short, there is no evidence that the Commission

ever notified Mr. Green of the 2015 Decision, making his Administrative Appeal (and this request) timely.

BASES FOR COMMISSION ACTION

1. PROPER CONSIDERATION SHOULD BE GIVEN TO THE UNDISPUTED MISCALCULATION OF MR. GREEN'S PPRD

A. There is No Legal, Factual, or Procedural Basis for the Commission to "Take No Action" on Mr. Green's Appeal.

There can be no factual or legal dispute that Mr. Green's PPRD—if properly calculated under the applicable law—was June 2, 2014, as presented in Mr. Green's Administrative Appeal. The facts here are simple: Mr. Green was convicted of felony murder based on two underlying counts of robbery and two underlying counts of kidnapping. The law is also simple: Rule 23-21.010(3) mandates that the number of months the Commission can add for underlying offenses as aggravating factors in a felony murder conviction "*shall be zero*." Finally, the math is simple: the Commission added 540 months (45 years) to Mr. Green's PPRD based entirely on using Mr. Green's underlying offenses as "aggravating factor(s);" subtracting that erroneously added 540 months from Mr. Green's incorrectly calculated date of June 2, 2059, the correct PPRD is June 2, 2014.

The Commission's miscalculation essentially adds another life sentence onto the incarceration requirements of Florida law. That is simply wrong. The Commission may not rely on improper aggravation in the calculation of an inmate's PPRD. And yet, that is exactly what the Commission is doing. By not following established Florida law, the Commission is keeping Mr. Green in prison until 2054,[1] when he should be eligible for parole today.

[1] During his subsequent parole interview hearing, the Commission voted to reduce Mr. Green's 2059 PPRD to 2054.

Moreover, Florida Administrative Rules provide no basis to unanimously vote to "take no action." The only instance under the Rules in which the Commission can take "no action" is under Rule 23-21.0051(13), which states that only "[w]hen the Commission cannot reach a majority vote, the action of the Commission is *no action* and the case will be placed on the next docket." (emphasis added). Thus, while there is authority for the Commission to "take no action" where there is a voting deadlock, doing so should have resulted in Mr. Green's appeal being placed on the next docket for proper consideration. Here, the Commission vote was not deadlocked, but unanimous, so Rule 23-21.0051(13) does not apply and the Commission cannot take "no action." And even if Rule 23-21.0051(13) did apply and the Commission could take "no action," it would require that Mr. Green's appeal be immediately re-docketed for proper consideration. On this basis alone, the Commission has a duty to, and should, re-docket and fully and properly consider Mr. Green's Administrative Appeal.

All Mr. Green is requesting is that rather than "take no action" in the face of a clear miscalculation that would keep Mr. Green, who is a model inmate (and citizen for the two years he spent outside of prison from 2021-2023), in prison for 45 years longer than required by law, the Commission should do the right thing: properly review and correct this unjust miscalculation that is contrary to Florida law.

B. Proper Consideration Should Be Given to Mr. Green's Appeal Because It Was Filed and Docketed based on "Significant Information," Under Rule 23-21.0051(1) and Not "New Information" Under Rule 23-21.0051(3).

Mr. Green's appeal was not based on "new information", but was filed and docketed under Rule 23-21.0051(1). Under Rule 23-21.002(29), "New information" means knowledge acquired subsequent to the initial interview or the establishment of the presumptive parole release date." After the Commission docketed and properly accepted Mr. Green's Administrative Appeal, the Commission did not have the discretion to decide that Administrative Appeal based solely on the

absence of "new information," because Mr. Green's appeal was neither filed, nor docketed based on "new information." Therefore, lack of "new information," standing alone, is an "improper consideration" on which to decide an Administrative Appeal. To the extent the Commission in fact *re*-docketed that Administrative Appeal as a "new information" case, that too was improper. Such a determination is not supported by the Florida Administrative Rules and does not constitute proper consideration of is appeal.

Mr. Green did not request modification of his PPRD based on "new information;" he administratively appealed the 2015 Decision setting his PPRD under the appropriate statute for this purpose, Section 947.173. His appeal is explicit on this point -- its first words are: "Pursuant to Section 947.173, Florida Statutes … Crosley Green … administratively appeals the September 23, 2015 action by the [Commission]."[2] His cover letter accompanying the Administrative Appeal is similarly explicit: Its first sentence requests the Commission "exercise its discretionary authority under Florida Administrative Code Rule 23-21.0051(1)." Rule 23-21.0051(1) allows the docketing of a case "[u]pon receipt of *significant information* impacting on parole decision-making" and is separate and distinct from the rule permitting the docketing of cases based on "new information," Rule 23-21.0051(3). And the gravamen of Mr. Green's request for review wholly concerns the improper action the Commission took in its 2015 Decision. **That information**—that the Commission had failed to comply with Rule 23-21.010(3) of the Florida Administrative Code stating, "consecutive sentence(s) for the underlying offense(s) in a felony murder conviction shall be used as an aggravating factor(s), *but the number of months assessed for these sentences shall*

[2] A request for action on the basis of new information would have requested a subsequent interview under a different Rule such as Section 947.174, or that the Commission review the official record or conduct additional interviews under Section 947.16(5).

be zero," but instead of adding zero months, the Commission mistakenly added 540 months or 45 years to Mr. Green's PPRD—**was "significant information," but not "new information."**

Consistent with the basis of Mr. Green's request, the Commission in fact docketed Mr. Green's Administrative Appeal according to the procedures of Rule 23.21.0051(1), which do not require "new information." Subsection 1 permits "*a single Commissioner*" to "have a case placed on the docket for a full Commission vote." Rule 23.21.0051(1). That is what occurred here. By contrast, a full Commission vote on the basis of "new information" proceeds under Subsection 3 and requires (1) "*a panel [to have] review[ed]* a case which is *on the docket*" *already*, (2) the panel to have "*determine[d] that new information has been gathered*," and (3) the panel to have *made a recommendation* regarding that new information. Rule 23.21.0051(3). None of that occurred here.

To be clear, the Commission had the authority to docket Mr. Green's Administrative Appeal as it originally did. The 60-day time limit in Section 947.173 is not jurisdictional, and the Commission may – and in some circumstances must – perform plenary review under Section 947.173 notwithstanding untimeliness. As such, the Commission regularly reviews the merits of a Section 947.173 administrative appeal made long after the 60-day time limit has expired, typically proceeding under Rule 23-21.0051(1) and based on "significant information impacting on parole decision-making." This process does not require "new information," and Mr. Green's representatives are not aware of any prior case in which the Commission has ruled on that basis in this process.

And where, as here, the Commission recognizes an indisputable, ministerial error was committed, which more than doubled an inmate's presumptive period of incarceration, and the correction of which requires no extensive record review or discretionary considerations on the merits, it is not merely a proper but an obvious case for the Commission to do the right thing and

correct its past error. It is, in fact, difficult to imagine why Mr. Green's case would not have been treated like so many others. Thus, when the Commission in fact exercised its discretion to docket the case as a Section 947.173 administrative appeal, its action was proper.

The Commission therefore properly docketed Mr. Green's Administrative Appeal for a full Commission hearing and vote as a Section 947.173 request for plenary review based on "significant information impacting on parole decision-making" under Rule 23-21.0051(1). Having properly docketed the appeal based on "significant information" that information should have been given full and proper consideration. It was not. Instead, the Commission effectively re-docketed Mr. Green's appeal as something it was not.

Such re-docketing flies in the face of the carefully designed statutory and administrative scheme setting out the Commission's procedures and substantive standards. The Commission should give full and proper consideration this action.

2. RULE 23-21.013(3) APPLIES BECAUSE MR. GREEN WAS "EXITED" FROM INCARCERATION AND RELEASED FROM PRISON FOR TWO YEARS.

In a supplemental filing on June 21, 2023, Mr. Green requested that the Commission fulfill its duty to reset Mr. Green's PPRD pursuant to Florida Administrative Code Rule 23-21.013(3), because Mr. Green had exited incarceration in 2021 and reentered in 2023. That Rule mandates "[v]acation of presumptive or effective parole release date" upon:

> The exiting of an inmate from the incarceration portion of his sentence, which shall include bond, escape, expiration of sentence, or transfer to a mental health facility," and that event "*shall vacate any established presumptive parole release date*. Any subsequent return to incarceration *shall require an initial interview* to *establish a presumptive parole release date*. (emphasis added)

There can be no dispute that Mr. Green was not incarcerated by the State of Florida (or any government authority, for that matter), from April 2021 to April 2023. Any dictionary will define "incarcerated" as being in prison or subject to confinement, yet for two years Mr. Green was able

to live with his family in Titsuville, Florida, to work a full-time job, and to go shopping—and even have strawberry ice cream—on the weekends. No reasonable mind would consider that "incarcerated." Mr. Green had exited the custody of the Florida Department of Corrections on April 6, 2021, after a federal court (the U.S. District Court for the Middle District of Florida in Orlando) released him from State incarceration and custody into federal supervision following the court's finding that Mr. Green's conviction was unconstitutional due to the State's withholding of material exculpatory evidence. And there can be no dispute that Mr. Green's release by the federal court was over the objection of the State of Florida, who filed a memorandum in opposition to Mr. Green's release from State custody—demonstrating that the State had an interest in *not* allowing Mr. Green to leave its custody and incarceration. *See* Order on Motions for Immediate Release of Crosley Green at 3, (attached as Ex. 2).

As background, the federal court's order was based on its finding that Mr. Green had been unconstitutionally convicted and "the Court conditionally granted the writ of habeas corpus as to Issue One of Claim One." *Id.* at 2. The federal court also held that Mr. Green had "been incarcerated over thirty years and has been described as a 'model prisoner' by the Warden of [his current prison]." *Id.* at 6. Further, the court found that "the public has a strong interest in the release of a prisoner whom the Court has found to be incarcerated in violation of the Constitution" and that the State had "failed to establish that [Mr. Green] poses any risk to the public." *Id.* The federal court thus granted Mr. Green's motion for his "immediate release" because, among other things, his "custody [was] in violation of the Constitution." *Id.* at 7.

From that moment, on April 6, 2021, Mr. Green was no longer incarcerated. He was no longer in the custody of the State of Florida or behind bars at Calhoun Correctional Institution or any other jail or prison of the State of Florida or any other governmental authority. And Mr. Green

was no longer subject to any requirements or conditions of the State of Florida; his conditions for release were set entirely by a *federal* judge, he reported solely to a *federal* probation officer, and he had no duty whatsoever to the State of Florida or its agents. If the State of Florida had its way, Mr. Green would have never been released from prison and generally free to work and live with his family. The fact that the *federal* courts and *federal* law enforcement had to step in to secure that for him, more than anything else, demonstrates that Mr. Green was in no way subject to the "incarceration portion of his sentence" by the State of Florida beginning in April 2021. It was only when he voluntarily surrendered on April 21, 2023 to the State of Florida that Mr. Green returned to incarceration. Yet that return is the triggering event in Rule 23-21.013(3) that obligates the Commission to set an *initial interview* and to "establish" (*i.e.*, determine anew) a PPRD.

Rather than "establish" Mr. Green's PPRD in compliance with its duties under Rule 23-21.013(3), however, the Commission stated at the hearing that Rule 23-21.013(3) did not apply, providing no further explanation. All the Commission did was make reference to the General Counsel's office, but the General Counsel's office has been notably silent, never having provided Mr. Green, his counsel, or the People of the State of Florida any reasoning to support the Commission's inaction. That is likely because there is no escaping that, by its plain language, Rule 23-21.013(3) applies to Mr. Green's release from incarceration. But it is solely the responsibility of the Commission, not its Office of General Counsel, to give full and proper consideration to Mr. Green's appeal. And should the Commission have to "establish" Mr. Green's PPRD anew, it could not take a "no action" vote on the egregious addition of 45 years to his PPRD date in its 2015 Decision. It is one thing to make a mistake; it is another to keep a man behind bars until he is 100 years old to avoid having to correct that mistake. Mr. Green requests proper

consideration of his request that his PPRD be vacated and "established," consistent with Florida law and the appurtenant duties of the Commission.

3. BASED ON NEW INFORMATION, THERE IS NO EVIDENCE THAT MR. GREEN'S APPEAL IS UNTIMELY.

Finally, if the Commission believed "new information" was necessary because Mr. Green's Administrative Appeal is untimely, it is not. As explained, "new information" is not necessary for the Commission to grant relief to an Administrative Appeal on the basis of significant information impacting Commission decision-making. Regardless, Mr. Green's Administrative Appeal was timely under the relevant statute, and it therefore required no "new information," because there is no evidence that the Commission notified him of the 2015 Decision regarding his PPRD date.

Counsel for Mr. Green filed a public records request for the notification letter and was informed there is no record of any notice being sent. On June 27, 2023, counsel for Mr. Green submitted a public records request for "The notification letter sent to Mr. Green informed [sic] him of the results of his parole hearing held on September 23, 2015. The Commission Action was certified on September 29, 2015." *See* Ex. 3, Public Records Request; Ex. 4, Cover Letter of Florida Commission on Offender Review 1. The Commission provided "[a]ll non-confidential and non-exempt responsive records" on June 28, 2023. *See* Ex. 4, Cover Letter of Florida Commission on Offender Review 1. No notification letter or other correspondence with Mr. Green was included. *See id.* Accordingly, there is no evidence that Mr. Green received notice of the Commission's PPRD decision back in 2015.

As the Commission is well aware, it is the Commission's legal responsibility to notify an inmate in writing regarding its decision regarding his PPRD date so that he or she is on notice and can file a timely appeal. And, as the Commission is well aware, its rules require any such appeal to refer to the content of that notification, which cannot occur unless the inmate receives it. Here,

there is no evidence that the Commission ever sent, or that Mr. Green ever received, such a notice. Surely, if the Commission sent Mr. Green a notice it is required by law to send and if Mr. Green's right to appeal depends on such a notice, there should be a record of it. There is none. Mr. Green could not appeal a decision he was not notified of as required by law. Here, the earliest date on which Mr. Green could have been notified is when *his counsel* first received the Commission's 2015 Order on Initial Review on March 15, 2023. His counsel filed his first request for review on March 17, 2023, two days later. Accordingly, Mr. Green's Section 947.173 request for review is timely.

CONCLUSION

The Commission should do the right thing. Based on the forgoing, Mr. Green respectfully requests that the Commission fully and properly exercise its duties to consider Mr. Green's Administrative Appeal, whether by new action or reconsideration of its decision to "take no action," and whether to modify or establish anew Mr. Green's PPRD correctly under the law to June 2, 2014. Additionally, the Commission should schedule Mr. Green for an immediate Effective Interview.

* * *

Respectfully submitted,

____

Vince J. Galluzzo, Esq.
Keith Harrison, Esq.
Jeane A. Thomas, Esq.
Crowell & Moring, LLP
1001 Pennsylvania Ave, NW
Washington, DC 20004

Exhibit 1

FLORIDA COMMISSION ON OFFENDER REVIEW

CROSLEY GREEN

New Information Hearing

Subsequent Interview Hearing

Tallahassee, Florida

June 21, 2023

Commissioner Melinda N. Coonrod, Chairman

Commissioner Richard D. Davison, Vice Chair

Commissioner David A. Wyant, Secretary

1 MADAM CHAIR: Okay, so we'll go the subsequent, which was my item
2 19, so on Crosley Green.
3 MR. MACK: David Mack, parole specialist.
4 MR. GALLUZZO: Vince Galluzzo, from Crowell and Moring.
5 MR. MACK: Commissioners, I want to lay out-
6 MADAM CHAIR: One moment. I'm sorry, one second, I just want to
7 announce that I just have, uh- okay. Alright, this is on the docket as
8 listed as new information, so I'm sorry, you may go ahead.
9 MR. MACK: Good morning, Commissioners. I want to lay out the
10 plan for our presentation and the way [INDISCERNIBLE] will follow, to
11 the three separate issues that we're going to address. The first issue
12 is, that pursuant to Rule [INDISCERNIBLE] administrative parole 23-
13 21.013(3) that deals with when an inmate exit the system from
14 incarceration, and he's out, the way that Mr. Green is, that when he
15 returns, the Commission should reset his presumptive parole release
16 date, per that Rule. Counsel of record will speak to that. The second
17 issue we'll deal with, it will be the second deal with the time bar
18 issue as I discussed with both of you, both briefly, Commissioners,
19 regarding the administrative appeal that we had filed. That will be the
20 second issue. The third issue will be why we believe that both the F
21 weapon and the two counts of kidnapping should be removed per the Rule
22 that talks about [INDISCERNIBLE] convictions, that all underlying
23 convictions for those [INDISCERNIBLE] issues should be removed per the
24 Commission Rules. Vince.
25

1 MR. GALLUZZO: Thank you, Mr. Mack, good morning, Commissioners.
2 Thank you for listening to our presentation today. As Mr. Mack said,
3 the first issue I'll take up is related to Rule 23-21, 013, subsection
4 3, and I'll note at the outset that under either that Rule or the
5 discretionary issue that Mr. Mack is going to be addressing, our
6 request for relief is the same, to either set a new or to reduce Mr.
7 Green's PPRD to a date no later than June 2nd, 2023. Rule 23-21, 013,
8 subsection 3 requires that the Commission vacate its September 2015
9 PPRD in this case. And that's because Mr. Green exited the
10 incarceration portion of his sentence from April 2021 to April 2023,
11 while he was on supervised release under the custody not of the state,
12 but of the federal probation office. The Rule states that, in pertinent
13 part, and I'll quote, "The exiting of an inmate from the incarceration
14 portion of the sentence shall vacate the established presumptive parole
15 release date. Any subsequent return to incarceration shall require
16 initial interviews to establish a presumptive parole release date."
17 Now, Mr. Green had exited from April 2021 to April 2023, and recently
18 returned to incarceration as required by the court order. Rule 23-21,
19 013, subsection 3 would require [INDISCERNIBLE] by operation of law,
20 that his September 2015 PPRD is vacated. It no longer exists, and
21 therefore a new one needs to be established. There are exceptions in
22 that Rule, but none of them apply. They apply to, quote, "travel to
23 court proceedings, to act as a witness, or to have a resentencing
24 done," none of which apply here. For the two years of April '21 to
25 April '23, Mr. Green was free to work, free to live with family, have

1 limited free time while he was on supervised release. Again, not by the
2 state but importantly by the federal probation office. It’s our
3 position there can be no dispute that Mr. Green in fact exited the
4 incarceration portion of his sentence at that time, and thus there can
5 be no dispute that that Rule apply. This is information that is new, it
6 is not time barred, and it is right to address at this point. We
7 request that the Commission follow that Rule, establish a new PPRD date
8 consistent with the arguments made in our administrative appeal, which
9 Mr. Mack will now address as to the time bar issue.
10 MR. MACK: Commissioners, regarding the time bar issue, do you
11 recall in our initial appeal that we filed, we noted in our appeal that
12 the issue of the time bar will be addressed, because I know the law. I
13 have practiced before this agency for forty years. I just wanted to
14 speak about it, I am a court-appointed expert witness when it comes to
15 parole matters. With the statement in the appeal, we understand that
16 the time of the appeal decision has elapsed, however we urge the
17 Commission to exercise discretionary powers to re-docket Mr. Green’s
18 case in the fairness of justice, that this is a clear error against the
19 statute that effects Mr. Green’s PPRD date. Then we cited the Rule in
20 this matter. In this case, we made sure that the Commission understood
21 that the Rule is that a case can be re-docketed, pursuant to rule 23-
22 21.05.1, [INDISCERNIBLE] information comes to the Parole Commission
23 that significantly affects the setting of the PPRD date, one
24 Commissioner can dock the case. That was the Rule that we stated in the
25 appeal. That was the discretion. And I can tell you for forty years in

1 practice before this agency, you have, this institution has
2 consistently accepted late appeals. Period. It has occurred. In this
3 instance, we are simply arguing that the best thing to do in this case
4 is re-visit that issue, and allow us to make the merits of the argument
5 that this agency should be about doing impartial decision-making, a
6 decision that is just and fair. And I leave you with this quote by
7 Martin Luther King: "The time is always right to do the right thing."
8 The time is always right to do the right thing, and the right thing
9 here and the fair thing here is that, you know by the merits of your
10 own Rules, that the substantive two kidnapping charges as a part of the
11 present Rule should be removed. Vince will further address those things
12 in the appeal that we filed. Thank you.
13 MR. GALLUZZO: Thank you, Mr. Mack. Now I'll address why the
14 calculation of the operations done in the September 2015 PPRD was
15 incorrect under Rule, but I'll note that whether it's for adjustment of
16 that PPRD or the setting of a new one based on my first argument, those
17 are alternative arguments, the analysis here is the same. The
18 Commission recognized in September 2015, that Mr. Green was convicted
19 of felony murder, and that now they resolved with that felony murder,
20 or as part of that felony murder, there were four other consecutive
21 sentences, two for robbery with a firearm, two for kidnapping. In
22 calculating the aggravating factors, the Commission correctly set at
23 zero months the robbery with a firearm. And I have reviewed the
24 transcripts, and the Commission noted that because that was part of the
25 felony murder. Well, also what was part of the felony murder, as argued

1 by the state, as charged by the state, as found by the jury, and as
2 sentenced by the court, was the kidnapping charges. Instead of setting
3 those at zero, though, the Commission set those at 240 months each,
4 totaling 480 additional months aggravation. There was no reason, there
5 was no good reason to treat the robbery count at zero months,
6 correctly, and the kidnapping counts at 240 months each, incorrectly.
7 The reason is, and we can see in the materials provided with our
8 administrative appeal, that, in part, because of the way the state
9 presented the case to the jury. Right now I'm referring to page 1790 of
10 the trial transcript. What the state argued to the jury in closing
11 arguments is quote, "We've alleged that he shot Charles Flynn Jr., and
12 that he did that during the course of committing robbery or kidnapping.
13 We alleged it in the disjunctive. It could be either. It could be
14 both." The court later at pages 1929 to 1930 repeated similar
15 instructions on the robbery or kidnapping or both as being part of the
16 alleged felony murder, and the later charged felony murder. Not only
17 that, the state linked the robbery and the kidnapping charges together
18 such that they could not be separated from one another, to be
19 considered one as part of felony murder and one not as part of felony
20 murder. I'm referring now to page 1795 of the trial transcript, where
21 the prosecutor argued that quote, The purpose of the kidnapping, quote,
22 "was in order for Mr. Green to facilitate the commission of the crimes
23 that he had started, the robbery." The state thus presented a single
24 criminal transaction to the jury of a felony murder committed in the
25 commission of two robberies and two kidnappings. The jury subsequently

found Mr. Green guilty of first-degree murder under this theory, which you can see at page 1977 of the trial transcript. In brief, the issue with the counts 4 and 5 of kidnapping should not have gotten, in a new review, if the Commission were to decide to go that way, should not receive a different treatment than the robbery with a firearm charge. Those also, counts 4 and 5, should be zeroed out for the same reason. Under that Rule 23-21, 010, subsection 2a, says that, underlying offenses of felony murder, consecutive with felony murder, cannot be – I'm sorry – must be used as an aggregating factor but cannot be given a number other than zero. I'm sorry, I referred to the wrong section, it's 23-21, 010, subsection 3. And so, under that, what we would ask is that Mr. Green's PPRD, under our administrative table, be reduced to a date no later than June 2nd, 2023, or if, on my first argument, it is set anew, set for those same reasons, to a date no later than June 2nd, 2023.

MR. MACK: Just in closing, a couple of issues, because there also was the weapon that was on the case that we argued [INDISCERNIBLE] regarding felony murder has to do with the two kidnapping counts, in terms of our appeal, [INDISCERNIBLE] two kidnapping counts that's on there that we have both addressed. Because we argued that the weapon was an element of the robbery, the robbery was an element of the felony murder, so therefore they [INDISCERNIBLE].

MADAM CHAIR: Thanks, gentlemen. Any questions?

COMMISSIONERS WYANT AND DAVISON: No.

1 MADAM CHAIR: Anyone online wishing to speak in opposition, press
2 *6? I know that we bifurcated this, we heard the victims when we were
3 on the Jacksonville vote. Okay, let's start with Commissioner Wyant on
4 the vote.
5 COMMISSIONER WYANT: Thank you, thank you both for your testimony
6 here today and presentation, and for a matter of record, I will state
7 that I had the opportunity to speak with both of you gentlemen
8 yesterday. As Madam Chair said, these requests for review were placed
9 on the docket as new information, and however upon my review, I find no
10 new information presented. The requests for review are untimely, and I
11 vote to take no action. I make it clear for the record that my vote to
12 take no action is legally distinct from a vote of making no change. As
13 it relates to Rule 23-21.13.iii, upon my review, I do not feel this
14 rule is applicable in this situation.
15 MADAM CHAIR: Commissioner Davison?
16 COMMISSIONER DAVISON: In the matter of Crosley Green, I have had
17 the opportunity to review this case in its entirety. I have previously
18 spoken with Mr. Galluzzo and Mr. Mack extensively, as it relates to
19 their arguments in the Crosley Green case. I have also had the
20 opportunity to consult with legal counsel, and my position is this –
21 don't get excited, Mr. Mack – I agree with Mr. Mack in limited part,
22 and that part is that impartial decision-making, decisions should be
23 just and fair, and I totally agree with that. I also agree with Dr.
24 Martin Luther King, that the time is always right to do the right
25 thing. And so, with that said, I have fully reviewed this case and my

1 position is taken with good reason. I believe that the requests for
2 review were also placed on the docket for new information, and I find
3 no new information presented. So therefore, my vote is to take no
4 action as opposed to making no change, and the two, no action versus no
5 change, are legally distinguishable. And so, I stand by my previous
6 vote and I take no action.
7 MADAM CHAIR: And I voted to agree with my colleagues, and I will
8 say that Mr. Mack, regarding the document that you've presented this
9 morning on Rule 23-21.8013, as of right now, I had legal look into it,
10 and they don't believe it's applicable, but I am giving them the full
11 document after this. If they have a change of mind, then we'll be
12 letting you know, but right now I don't find cause to go under this
13 Rule. So, that is the subsequent. We will go to Item 19 now in Crosley
14 Green.
15 MR. GALLUZZO: I'm sorry, will the Commission indulge us for just
16 a moment? For purposes of clarity, is there any more clarity you can
17 provide on why the Commission believes that subsection 3 of that Rule
18 does not apply? Is there any more, for clarity of the record, that you
19 could provide?
20 COMMISSIONER WYANT: Yeah, I would refer to general counsel.
21 MADAM CHAIR: Yes, we just got it this morning and he's doing a
22 quick review. That is his current opinion, but I'm going to give all of
23 it to the general counsel and make sure that that is exactly what the
24 ruling on there should be.
25

1 MR. MACK: Commissioner Wyant, Commissioner Davison, Commissioner
2 Coonrod, clearly, clearly, you denied my case on the basis of not new
3 information. I did not [INDISCERNIBLE] the administrative part of it.
4 And they docketed it. We didn't file it as new. We filed it as an
5 administrative appeal that was [INDISCERNIBLE], and they asked you to
6 docket it, to communicate based on the fact that there were errors made
7 in the setting of the date. We didn't say new information, we said
8 you've got the law wrong. And that's why we say that my petition does
9 not state, nowhere in my request, in that administrative appeal, we
10 said we were presenting new information. That was an administrative
11 docking of the new information, not the petition that we filed. We
12 filed the petition as an administrative appeal that said that it was
13 about the [INDISCERNIBLE] your broad discretionary authority to
14 docketing cases to revisit the setting the presumptive parole release
15 date. We did not do that. That docketing occurred internally. We did
16 not file it as new information. And that is it.
17 MADAM CHAIR: Mr. Mack, I don't mean to cut you off, but we do
18 know that, but...
19 MR. MACK: Okay, I just wanted to say to you, it got denied based
20 on that reason. I'm saying we didn't file it that way. That's a fact.
21 COMMISSIONER WYANT: Madam Chair, just to clarify, the issue we
22 took up was on the full docket, and now we're going to go back to the
23 subsequent?
24 MADAM CHAIR: Yes.
25

1 MR. MACK: Okay. I will do a brief introduction, and then Vince
2 will then [INDISCERNIBLE] mitigating factors.
3 COMMISSIONER WYANT: Mr. Mack, before, I need to set it in the
4 proper posture. This is the matter of Crosley Green before the
5 Commission. We have a subsequent interview that was conducted on May
6 10, 2023, at the Central Florida Reception Center. The Commission
7 investigator is recommending no change. Mr. Mack.
8 MR. MACK: Thank you, sir. Commission, dealing with the
9 subsequent interview, I would ask the Commission to consider referring
10 this case to the full Commission for reduction of greater than 60
11 months. Specifically, Commissioners, I hope we would agree, based on
12 evidence and mitigation that Vince will present in this case, counsel
13 of record, that Mr. Green is deserving of a significant reduction of
14 his presumptive parole release date. And we hope that the amount of
15 that reduction will be 432 months. Thank you.
16 MR. GALLUZZO: Thank you, Mr. Mack, and thank you again,
17 Commissioners. This is quite a unique case. It’s a case where the
18 Commission doesn't have to guess at whether an inmate will become
19 integrated into society and become a productive member of society on
20 parole. Here we have, through an interesting procedure, real-world
21 evidence, over the course of two years of supervised release, from
22 April 2021 to April 2023, where Mr. Green was by all accounts a model
23 citizen we could all strive to [INDISCERNIBLE]. There can be no better
24 predicter that Mr. Green will continue to be that same model citizen if
25 given the opportunity of parole. I’ll walk us through Rule 23-21, 010,

1 subsection 5bii, which are the mitigating factors that the Commission
2 explicitly can consider, although can consider others as well. For two
3 years while on supervised release, with quite a bit more freedom than
4 most inmates will have incarcerated, he was in full compliance with
5 every single one of those conditions for release. This is on top of 30
6 years of exceptional prison record, supported by declarations from
7 corrections officers who vouched for him, stating that they have never
8 done this before. And importantly the declaration from his warden. The
9 former warden at Calhoun Correctional Institution, Heath Holland, who
10 notes that Mr. Green was quote, “a model prisoner,” and that Warden
11 Holland mentioned to others that he wished all of their inmates at
12 Calhoun were like Mr. Green. Warden Holland also notes Mr. Green’s
13 positive attitude, and that his record as an inmate was unusual in his
14 [INDISCERNIBLE]. For subsection c, the inmate has strong family ties.
15 Mr. Green’s entire family is in Titusville, Florida. That's where he’s
16 been on supervised release. It’s a very close-knit family, and he
17 serves as the patriarch. That's actually where he gets the nickname
18 “Papa,” from all the times throughout childhood and in the two years of
19 supervised release, that he knits the family together. While he was on
20 release, he supported his family financially, he goes to regular family
21 gatherings, and he fell in love and got engaged. These are exactly the
22 same strong family ties the Commission can mitigate. Subsection b. The
23 inmate has the availability of extremely strong community resources.
24 While on release, Mr. Green was active in his community, and he was a
25 positive force to those who were around him. Many people in the

1 community submitted letters on his behalf to the Commission, noting his
2 impact on them, from coworkers, to parishioners, to leaders at his
3 church. He joined church ministry at the Church of Tomorrow as a
4 leader, and he plans to become a deacon if he is paroled. He also has
5 strong community resources from work, which also address the other
6 mitigating factor D, that the inmate has educational skills which make
7 him employable in the community. But Mr. Green isn't just employable in
8 the community. He has particular skills at his employer that he was at
9 for supervised release that make him indispensable to that company. He
10 worked as an advanced machinist supporting the space [INDISCERNIBLE]
11 industry and other high-tech industries. Letters from his employer, the
12 office manager of the company, and even the CEO of a fellow company all
13 speak to his impact on them during his release and his importance to
14 the company. The owner of that company, Mr. Paul Richards, writes in
15 two different declarations, which were submitted to the Commission,
16 that he is a model employee. Quote, "He is very smart and has quickly
17 learned how to operate very complicated machinery." He, quote, "is a
18 hard worker who is dependable and very dedicated." Quote, "He has
19 demonstrated great technical ability," and importantly, quote,
20 "Replacing him would be difficult because he has learned to do some of
21 our hardest jobs." The officer manager, Lisa Ann Fusco, also notes that
22 he was a model employee. And the CEO of another company, who had to
23 interact with Mr. Green, Ms. Patricia LaPoint, even wrote a letter
24 after working with Mr. Green one-on-one for several days, noting his
25 positive willingness to learn attitude and his concern for the safety

1 of his fellow employees. During his release, we were also able to get
2 him a full psychological evaluation, important in this case because it
3 notes a number of things in support of mitigating factors. Like, Mr.
4 Green established a stable residence, supported by his family. He has a
5 large number of social support with family, friends, his legal team,
6 which is far beyond just the two of us standing up here. He has a
7 remarkable ability to cope with difficult circumstances, and he
8 continues to remain a positive outlook in his life, and he particularly
9 excelled in his ability to integrate back into society during his
10 supervised release, and become a contributing member of society. The
11 full psychological evaluation ends with conclusions that I'm just going
12 to quote into the record here because they are so profound. Quote, "Mr.
13 Green is a stable individual who stands out for his positive
14 attributes." Quote, "Mr. Green is deemed to be at low risk of engaging
15 in future violence." Mr. Green, quote, "has sustained a stable
16 lifestyle devoid of violence or rule-breaking behaviors for over 30
17 years. This is reflective of a personality pattern of an individual who
18 is motivated to act responsibly, engage in pro-social behaviors, and
19 respond to stressors in an adaptive and healthy manner." And finally,
20 quote, "Mr. Green presents with positive indicators that he will
21 continue to do well in the community. He is deemed to be at low risk of
22 reoffending or engaging in future violence, and he is expected to
23 respond well to supervision." How special Mr. Green is is even more
24 amazing when you consider the exceptional, challenging circumstances
25 that he was raised in. He was raised in a family that was subject to

1 abuse and neglect, with an alcoholic father who he and his mother beat
2 Mr. Green and their siblings, and in the end, his father killed his
3 mother in a murder-suicide. This left Mr. Green as the peacemaker for
4 the family, and that is how he overcame the violence and deprivation of
5 his childhood. He became that peacemaker. He dedicated himself to
6 supporting his family, and again, that's where he got the nickname
7 “Papa” that he’s had since he was a young man. There are no allegations
8 of violence in his record, except for the instant conviction, and 30
9 years of exceptional prison record, where he was never known to be a
10 disciplinary problem, where he came to faith, real faith, and helped
11 other fellow inmates find their faith, and that he’s been 30 years
12 sober. Importantly and also unique in this case, he’s been a client who
13 is innocent, who has maintained his innocence since day one. We don't
14 want to re-litigate the case up here, that's not the purpose of this
15 Commission. But substantively, this Commission needs to know that the
16 reason Mr. Green was out for two years on supervised release is because
17 a Federal Court in Orlando determined that he had been
18 unconstitutionally convicted, because exculpatory evidence about the
19 conclusions of the first responding police officers to the crime scene
20 pointed a different perpetrator other than Mr. Green. That exculpatory
21 evidence was withheld from Mr. Green and his counsel in violation of
22 Brady v. Maryland and the U.S. Constitution. And while that decision
23 was overturned by the 11th Circuit, Mr. Green’s petition to the U.S.
24 Supreme Court was supported by over 100 amici, by individuals from law
25 professors, to former federal and state prosecutors, to former state

1 supreme court judges and justices, and to organizations to support
2 those in Mr. Green’s shoes. And that's not the only exculpatory
3 evidence discovered after trial. Every witness to testify against Mr.
4 Green at trial has since recanted, testifying under oath that they were
5 pressured into testifying against him for various reasons. Ten alibi
6 witnesses have also been identified, each signing a sworn affidavit
7 that Mr. Green was nowhere near the crime scene on the night of the
8 crime, placing him miles and miles away for the entire night. The
9 unreliable dog tracking evidence comes from the same dog that has been
10 discredited many times since then for making the same exact mistake,
11 that this general-purpose patrol dog, not a trained scent dog, had
12 made. And a complete lack of physical evidence that Mr. Green was even
13 at the crime scene. Plus, the physical evidence being completely
14 inconsistent with the state’s story of the case at trial. For example,
15 a lack of gunshot residue on the decedent’s hands, even though the
16 state argued that there was a gun fight between the perpetrator and the
17 deceased. All of this supports Mr. Green’s continued claims to
18 innocence, and all of this, including all of the mitigating factors,
19 afford a reduction of Mr. Green’s PPRD of the amount that we are
20 requesting of 432 months, which would set his PPRD at a date of, I
21 believe, June 2nd, 2023. Now, with the few seconds we have left, I’ll
22 turn back to Mr. Mack for conclusion, but of course Commissioners, we
23 are here to answer any questions.
24 MADAM CHAIR: Thank you.
25 MR. GALLUZZO: Thank you.

1 MR. MACK: I just [INDISCERNIBLE] ask the Commission to grant our
2 request to report our case to the full Commission to consider a
3 reduction of the 432. Thank you.
4 MADAM CHAIR: Thank you. Alright, we did bifurcate this case and
5 the victims spoke when we were in Jacksonville, and we will move to the
6 vote now, starting with Commissioner Davison.
7 COMMISSIONER Davison: In the matter of Crosley Green, and I've
8 had the opportunity to review this case in its entirety, I have
9 listened very closely to the comments by both Mr. Mack and Mr.
10 Galluzzo. During my discussions with both of them yesterday, I
11 indicated some of my thoughts as it relates to this case. So, in the
12 matter of Crosley Green, my vote is to disagree with the Commission
13 investigator. I have a 60-month reduction, based upon compliance with
14 the rules of the institution as well as his positive conduct while on
15 release, which would set the new PPRD at June 2nd, 2054. I would set
16 this for a three-year review of March 2026. The reasons for the
17 extended interview are use of a deadly weapon, to whit a firearm,
18 multiple separate offenses, and unreasonable risk factors. Commissioner
19 Wyant?
20 COMMISSIONER WYANT: Uh, that is my vote as well..
21 MADAM CHAIR: Alright. Thank you again, gentleman, we appreciate
22 it.
23 MR. MACK: Okay, thank you. One other thing Commissioners, just
24 for the record, this is a complete statement made, may I approach?
25 MADAM CHAIR: Yes.

1 MALE 1: I'm going to go head and put it in the file.

2 MADAM CHAIR: Okay.

3 MR. MACK: This is a complete documentation of the rebuttal to

4 statements that the victim made at the June 7th meeting in

5 Jacksonville.

6 MADAM CHAIR: Alright, I'll make sure that a copy gets to each

7 Commissioner and is placed in the file.

8 MR. MACK: Okay, thank you.

9 MADAM CHAIR: Thank you.

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I, Anders Nelson, hereby certify that the foregoing document is, to the best of my knowledge and belief, a true and accurate transcription from English to English.

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Anders Nelson
Project Manager

July 13, 2023

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Exhibit 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SEALED

CROSLEY ALEXANDER GREEN,

Petitioner,

v. Case No: 6:14-cv-330-RBD-GJK

SECRETARY, DEPARTMENT OF CORRECTIONS and ATTORNEY GENERAL, STATE OF FLORIDA,

SEALED

Respondents.

ORDER

This cause is before the Court on Petitioner's Motions for the Immediate Release of Crosley Green ("Motions for Immediate Release," Doc. Nos. 97, 101).[1] Respondents have filed Responses ("Responses," Doc. Nos. 106, 107).[2] Petitioner requests that "the Court . . . reweigh the *Hilton*[3] factors in light of his current, changed, circumstances, and to release him from continued unconstitutional incarceration." (Doc. 97 at 27).

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[1] Doc. 97 is the redacted version of the Motion for Immediate Release, while Doc. 101 is the unredacted version of the Motion for Immediate Release filed under seal.

[2] Doc. 107 is the redacted version of the Response, while Doc. 106 is the unredacted version of the Response filed under seal.

[3] *Hilton v. Braunskill*, 481 U.S. 770 (1987).

I. PROCEDURAL BACKGROUND

On July 20, 2018, the Court granted in part and denied in part Petitioner's Amended Petition for Writ of Habeas Corpus. (Doc. 70.) Specifically, the Court conditionally granted the writ of habeas corpus as to Issue One of Claim One, within ninety days from the date of the Order, unless the State of Florida initiated new trial proceedings in state court consistent with the law. All remaining claims were found to be without merit, and habeas relief was denied with prejudice as to those claims. The parties appealed to the Eleventh Circuit Court of Appeals ("Eleventh Circuit"), and the appeal remains pending. (Doc. Nos. 77, 81.) On September 5, 2018, the Court granted Respondents' Motion for Stay Pending Appeal. (Doc. 83.) On January 7, 2019, the Court denied Petitioner's Motion for Release Pending Appeal. (Doc. 87.)

Due to COVID-19, Petitioner moved in the Eleventh Circuit for immediate release on August 7, 2020. On September 14, 2020, the Eleventh Circuit denied the motion without prejudice to Petitioner moving in this Court for immediate release. Petitioner failed to file a motion for immediate release in this Court, and, on March 3, 2021, the Court entered an Order directing Petitioner to file a status report regarding his incarceration during COVID-19 and whether he intended to file a motion for immediate release in this Court. (Doc. 93.) Petitioner filed a Status

Report on March 17, 2021 (Doc. 94), and Respondents filed an Objection on March 18, 2021. (Doc. 95.)

II. Analysis

Petitioner states that the "reasons stated by the Court in January 2019 for keeping Mr. Green confined no longer exist and are overshadowed by the subsequent wildfire spread of COVID-19 throughout the country—and in Mr. Green's facility with no certain end in sight." (Doc. 101 at 8.) Petitioner asserts that he is at increased risk of dying from COVID-19 because of his age (63 years old), recent exposure to tuberculosis (for which he is undergoing treatment), history of high blood pressure, and race (African-American). (*Id.* at 7, 16.) Petitioner requests that the Court "grant his release from forcible exposure to COVID-19 pending the conclusion of the State's appeal (and potential retrial) . . . ." (*Id.* at 8.) Petitioner "is not seeking to lift the stay of the 90-day re-initiation order, and this Court can sustain that part of the stay order while at the same time releasing Mr. Green." (*Id.*)

Respondents counter that "the institution where Green is housed currently has no active cases of COVID-19 and the mortality rate of inmates in the Florida Department of Corrections remains less than that for the State of Florida at large." (Doc. 106 at 6.) According to Respondents,

> even with the TB re-exposure diagnosis, for which he is being treated, (his race, age and hypertension would also, presumably, make him

> more susceptible to COVID-19 outside of prison, too), Green is much less likely to be exposed to COVID-19 at Calhoun Correctional Institution where he is incarcerated (especially since there are no active cases at Calhoun Correctional Institution) than the State of Florida at large if he were released.

(*Id.* at 8). Respondents assert that Petitioner "has failed to demonstrate special reasons to justify his immediate release, *i.e.*, a substantial change in circumstances or irreparable harm, based upon COVID-19." (*Id.*)

There is a presumption of release pending appeal where a petitioner has been granted habeas relief. *See Hilton v. Braunskill*, 481 U.S. 770, 774 (1987). However, this presumption can be overcome if the traditional factors regulating the issuance of a stay weigh in favor of granting a stay. These factors include the following: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Id.* at 776. However, "[a] court is to consider three additional traditional stay factors if the habeas petitioner were to be released: (1) the possibility of flight; (2) the risk of danger to the public; and (3) the state's interest in continuing custody and rehabilitation of the petitioner while the case is pending appeal." *Kelley v.*

Singletary, 265 F. Supp. 2d 1305, 1307 (S.D. Fla. 2003) (citing to *Hilton*, 481 U.S. at 777).[4]

The Court determines that, because of the impact of the COVID-19 pandemic and the length of time to resolve Petitioner's appeal, the *Hilton* analysis of whether Petitioner should be released during the pendency of his appeal should be revisited.

As to the first factor, although Respondents have raised several debatable issues, they have failed to show a strong likelihood of success on appeal.

Next, with regard to the second factor, at this stage of the proceedings, there is no indication that Respondents will be irreparably injured in the event of Petitioner's release. Petitioner would be substantially injured since the Court has already reversed his conviction and ordered a new trial. Further, a "prisoner whose conviction is reversed by this Court need not go free if he is in fact guilty, for [the state] may indict and try him again by the procedure which conforms to

[4] In addition, Federal Rule of Appellate Procedure 23(d) provides that an initial order "governing the prisoner's custody or release . . . continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody [or] release . . . is issued." The Court finds that it has authority to rule on the pending motion whether it is considered an initial decision on the merits of Petitioner's custody or an independent order under Rule 23(d). *See Myers v. Superintendent, Indiana State Prison*, No. 1:16-cv-02023-JRS-DML, 2020 WL 2803904, at *3 (S.D. Ind. May 29, 2020).

constitutional requirements." *Hughes v. Vannoy*, No. CV 16-00770-BAJ-RLB, 2020 WL 2570032, at *2 (M.D. La. May 21, 2020) (citation omitted) (quotation omitted).

The third factor weighs in favor of release. Petitioner has been incarcerated over thirty years and has been described as a "model prisoner" by the Warden of Calhoun Correctional Institution ("Calhoun"), where he is currently incarcerated. (Doc. 97-1.) In addition, the COVID-19 pandemic has further amplified Petitioner's interest in release because of his age and medical issues. Although at present there does not appear to be an outbreak of the virus at Calhoun, that facility has had COVID-19 related deaths in the past. (Doc. 106 at 7.)

As to the fourth factor, the Court concludes that Respondents have failed to establish that Petitioner poses any risk to the public. "While there is no overstating the significance of the crimes [Petitioner] was convicted of, there is also no discounting the impact of [over thirty years] in prison on who [Petitioner] is today." *Waiters v. Lee*, 168 F. Supp. 3d 447, 453 (E.D.N.Y. 2016). As noted above, Petitioner has been described as a model prisoner by the Warden of Calhoun. Additionally, the public has a strong interest in the release of a prisoner whom the Court has found to be incarcerated in violation of the Constitution. The Court finds that the public interest weighs is favor of granting release pending appeal.

As to the three additional stay factors, Respondents have not offered any evidence to suggest that Petitioner is a flight risk or that Petitioner poses a danger

to the public. Petitioner is 63 years old and has high blood pressure and hypertension. Finally, the public has little interest in Petitioner's continued custody since he poses no danger to public safety and is not a flight risk. Any potential risk is sufficiently mitigated by the imposition of supervision and other conditions of release such as home confinement and location monitoring, imposed pursuant to the Court's authority under Federal Rule of Appellate Procedure 23.[5] Therefore, the State has little to gain from the continued incarceration of Petitioner, whom the Court has already determined is in custody in violation of the Constitution.

In sum, after considering each of the *Hilton* factors and all other relevant factor, the Court concludes that they weigh in favor of granting Petitioner's release during the pendency of his appeal subject to conditions.

III. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Petitioner's Motions for the Immediate Release of Crosley Green (Doc. Nos. 97, 101) are **GRANTED**.

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[5] The Court notes it has authority under Rule 23 to impose conditions of release over and above the possible imposition of a surety. *See O'Brien v. O'Laughlin*, 557 U.S. 1301, 1303 (2009); *Young v. Hutchins*, No. 2:12-cv-00524-RFB-NJK, 2021 WL 201477, *13 n.11 (D. Nev. Jan. 20, 2021); *Myers v. Superintendent, Ind. State Prison*, 1:16-cv-02023-JRS-DML, 2020 WL 2803904, *7–8 (S.D. Ind. May 29, 2020).

2. Petitioner's counsel shall notify the Warden of Calhoun of the issuance of this Order so that its provisions can be put into effect as quickly as possible.

3. Petitioner Crosley Green is to be released from custody into the custody of his brother-in-law, David Peterkin, during the pendency of the appeal with the Eleventh Circuit.

4. Petitioner shall proceed immediately to Mr. Peterkin's residence in Titusville, Florida, where he shall reside during the pendency of the appeal unless otherwise ordered by the Court.

5. Petitioner will be supervised by the United States Probation Office for the Middle District of Florida. Petitioner must make contact with the U.S. Probation Office for the Middle District of Florida Orlando Division, 401 W. Central Blvd., Suite 1400, Orlando Florida, within **72 hours** of his release from the Florida Department of Correction facility where he is currently housed. He shall continue to report to the Probation Office periodically as directed by the Court or the Probation Office.

6. During his release Petitioner shall participate in the Home Detention program until released by this Court. During this time, Petitioner will remain at the residence of his brother-in-law, Mr. Peterkin, except for

medical appointments, religious activities, essential shopping, employment and other activities approved in advance by the probation office. Petitioner will be subject to the standard conditions of Home Detention adopted for use in the Middle District of Florida, which may include the requirement to wear an electronic monitoring device and to follow electronic monitoring procedures specified by the probation office. Further, Petitioner shall be required to contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office based on his ability to pay.

7. Petitioner shall not commit any federal, state, or local crime.

8. Petitioner shall not unlawfully use or possess a controlled substance. The Court may subsequently order periodic drug testing.

9. Petitioner shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

10. Petitioner shall appear in court as required and surrender to serve any sentence, as ordered by a court.

11. Petitioner shall not obtain a passport.

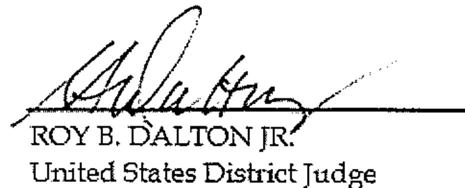
12. Petitioner shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the Probation Office.

13. Petitioner shall permit a Probation Officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in the plain view of the Probation Officer.

14. Petitioner shall notify the Probation Office within 72 hours of being arrested or questioned by a law enforcement officer.

15. The stay pending Respondents' appeal shall remain in effect to the extent that the Court ordered a retrial within ninety days from the date of its Order of July 27, 2018 (Doc. 74).

DONE and **ORDERED** in Orlando, Florida on April 6, 2021.



ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Counsel of Record
Warden of the Calhoun Correctional Institution,
Florida Department of Corrections

Exhibit 3

Martin, Virginia

From: David Mack <mackparole@aol.com>
Sent: Monday, August 14, 2023 11:53 AM
To: Martin, Virginia; Thomas, Jeane; Harrison, Keith; Morgan, Drake; Galluzzo, Vince
Cc: DAVID MACK; DAVID MACK
Subject: Fw: CROSLEY GREEN#902925

External Email

FYI,

----- Forwarded Message -----
From: FCORLegal <fcorlegal@fcor.state.fl.us>
To: David Mack <mackparole@aol.com>
Sent: Wednesday, June 28, 2023 at 08:39:07 AM EDT
Subject: RE: CROSLEY GREEN#902925

Good morning.

The Commission is in receipt of your public records request.

Thank you,

Public Records Unit

Office of the General Counsel

Florida Commission on Offender Review

4070 Esplanade Way

Tallahassee, Florida 32399

P: (850) 488-4460

E: fcorlegal@fcor.state.fl.us

From: David Mack <mackparole@aol.com>
Sent: Tuesday, June 27, 2023 7:09 PM
To: FCOR Legal Services <LegalServices@fcor.state.fl.us>

Cc: DAVID MACK <mackparole@aol.com>; DAVID MACK <mack728276@gmail.com>
Subject: CROSLEY GREEN#902925

Good morning. I hope all is well. I want to request the case material for the above-referenced individual:

1. The notification letter sent to Mr. Green informed him of the results of his parole hearing held on September 23, 2015. The Commission Action was certified on September 29, 2015.

2. 2015 Commission Investigator Initial Parole Interview Report and PPRD calculation attachments.

Thank you for your assistance in this matter.

David Mack

Parole Specialist

1100 East Park Avenue

Tallahassee, Florida 32301

phone: 850.284.8915

Exhibit 4

FLORIDA COMMISSION ON OFFENDER REVIEW
OFFICE OF THE GENERAL COUNSEL
PUBLIC RECORDS UNIT

4070 Esplanade Way
Tallahassee, Florida 32399-2450
P: (850) 488-4460
E: FCORLegal@fcor.state.fl.us

DATE: June 28, 2023

TO:
David Mack
Parole Specialist

SHIP TO:
David Mack
Parole Specialist
E: mackparole@aol.com

SUBJECT: FCOR, PRR, CROSLEY GREEN [DC 902925]

☒On June 27, 2023, the Commission received your emailed Public records request, wherein you request "**1.** The notification letter sent to Mr. Green informed him of the results of his parole hearing held on September 23, 2015. The Commission Action was certified on September 29, 2015. **2.** 2015 Commission Investigator Initial Parole Interview Report and PPRD calculation attachments," related to inmate Crosley Green [DC 902925].

☒The Commission has identified 12 pages of records responsive to your request.

☒The Commission has elected to provide you these records free of charge, as a courtesy. The provision of these records free of charge does not constitute a waiver of the Commission's authority to charge statutorily permissible fees for additional or future public records requests.

All non-confidential and non-exempt responsive records are included here. The provision of these records here completes the Commission's obligations pursuant to your June 27, 2023, public records request.

EXEMPTIONS The following information has been withheld or redacted from the responsive records:	
☒	Medical, psychological, and dental records, without a properly executed DC4-711B Consent for Release form. ss. 945.10(1)(a), 456.057(7)(a), Fla. Stat., and 45 C.F.R. § 164.502.
☐	HIV/AIDS testing information and/or substance abuse treatment records, without a properly executed DC4-711B Consent for Release form. ss. 381.004, 397.501, 397.752, Fla. Stat., and 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2.
☐	Biometric identification information, including fingerprints. s. 119.071(5)(g), Fla. Stat.
☐	Medical information pertaining to a prospective, current, or former officer or employee. s. 119.071(4)(b), Fla. Stat.

☐	Social security numbers. s. 119.071(5)(a), Fla. Stat.
☐	Bank account numbers or debit, charge, or credit card numbers. s. 119.071(5)(b), Fla. Stat.
☐	Records relating to an allegation of employment discrimination when the allege victim chooses not to file a complaint and requests that records of the complaint remain confidential. s. 119.071(2)(g), Fla. Stat.
☐	Preplea, pretrial intervention, pre-sentence or post-sentence investigations. s. 945.10(1)(b), Fla. Stat.
☐	Information regarding a person in the federal witness protection program. s. 945.10(1)(c), Fla. Stat.
☐	Records developed or received by any state entity pursuant to a Board of Executive Clemency investigation. s. 14.28, Fla. Stat.
☒	Information regarding a victim's statement or identity. ss. 945.10(1)(f), 119.071(2)(j), Fla. Stat. Article I, Section 16(b)(5), Fla. Const.
☐	Information, interviews, reports, statement, memoranda, and drug test results, written or otherwise, received or produced as a result of an employee/applicant drug-testing program preformed in accordance with the Drug Free Workplace Act. s. 112.0455(11), Fla. Stat.
☐	FCIC II/NCIC and criminal justice information. s. 945.053, Fla. Stat.
☐	Active criminal investigation or criminal intelligence information. s. 119.071(2)(c), Fla. Stat.
☐	Educational records; including personally identifiable records and reports of a student, and any personal information contained therein. ss. 1002.22(2), 1002.221, Fla. Stat.
☐	Personal identifying information contained in records documenting an act of domestic violence or sexual violence that is submitted to the department by an employee or a written request for leave or time sheet reflecting a request submitted by a department employee pursuant to s. 741.313, Fla. Stat. s. 741.313(7), Fla. Stat.
☐	A record that was prepared by an agency attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings. s. 119.071(1)(d), Fla. Stat.
☐	Information, which if released, would jeopardize a person's safety. s. 945.10(1)(e), Fla. Stat.
☐	Birth certificates, birth records, or certificates of live birth. ss. 382.012(5), 382.025(1), 382.025(3), 382.025(4), Fla. Stat.
☐	Juvenile criminal history records or data. ss. 943.053(3)(1), 985.04(1)(a), Fla. Stat.
☐	Data processing software obtained by an agency under a licensing agreement that prohibits the disclosure and which software is a trade secret, as defined in s. 812.081, Fla. Stat., and agency-produced data processing software that is sensitive, is exempt from s. 119.071(1) and s. 24(a), Article I, of the state constitution.
☐	Other:

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA.

STATE OF FLORIDA,

Plaintiff,

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

CASE NO. 89-4942-CF-A

VERDICT

We, the jury, find as follows, as to Count I of the charges: (check one only)

✓ 1. The defendant is guilty of First Degree Felony Murder,

____ 2. The defendant is guilty of Murder in the Second Degree With A Firearm,

____ 3. The defendant is guilty of Felony Murder in the Third Degree,

____ 4. The defendant is guilty of Manslaughter With A Firearm,

____ 5. The defendant is guilty of Manslaughter,

____ 6. The defendant is not guilty.

So say we all in Melbourne, Brevard County, Florida this 5th day of September, 1990.

[signature]
FOREPERSON

FILED IN OPEN COURT
This 5 Day Of Sept A.D. 1990
R.C. WINSTEAD, JR.
CLERK, CIRCUIT COURT 5:30 PM
BY [signature] D.C.

00140

220

1/1

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA.

CASE NO. 89-4942-CF-A

STATE OF FLORIDA,

Plaintiff,

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

VERDICT

We, the jury, find as follows, as to Count II of the charges: (check one only)

__✓__ 1. The defendant is guilty of Robbery With A Firearm,

_____ 2. The defendant is guilty of Robbery With A Weapon,

_____ 3. The defendant is guilty of Robbery,

_____ 4. The defendant is not guilty.

So say we all in Melbourne, Brevard County, Florida this __5th__ day of September, 1990.

[signature]
FOREPERSON

FILED IN OPEN COURT
This 5 Day Of Sept A.D. 1990
C. WINSTEAD, JR.
CLERK, CIRCUIT COURT 5:30 PM
BY [signature] D.C.

00141

221

TRM MAR

1/1

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY,
FLORIDA.

STATE OF FLORIDA,

Plaintiff,

CASE NO. 89-4942-CF-A

vs.

CROSLEY ALEXANDER GREEN,

Defendant.
______________________________/

VERDICT

We, the jury, find as follows, as to Count III of the charges: (check one only)

__✓__ 1. The defendant is guilty of Robbery With A Firearm,

_____ 2. The defendant is guilty of Robbery With A Weapon,

_____ 3. The defendant is guilty of Robbery,

_____ 4. The defendant is not guilty.

So say we all in Melbourne, Brevard County, Florida this __5th__ day of September, 1990.

[signature]
FOREPERSON

FILED IN OPEN COURT
This 5 Day Of Sept A.D. 1990
R.C. WINSTEAD, JR.
CLERK, CIRCUIT COURT 5:30 PM
BY A Brasser D.C.

00142

222

TRM MAR

1/1

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA.

CASE NO. 89-4942-CF-A

STATE OF FLORIDA,

Plaintiff,

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

VERDICT

We, the jury, find as follows, as to Count IV of the charges: (check one only)

✓ 1. The defendant is guilty of Kidnapping,

_____ 2. The defendant is guilty of False Imprisonment,

_____ 3. The defendant is not guilty.

So say we all in Melbourne, Brevard County, Florida this 5th day of September 1990.

[signature]
FOREPERSON

FILED IN OPEN COURT
This 5 Day of Sept A.D. 1990
R.C. WINSTEAD, JR.
CLERK, CIRCUIT COURT 5:30PM
BY [signature] D.C.

00143

223

TRM MAR

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA.

CASE NO. 89-4942-CF-A

STATE OF FLORIDA,

Plaintiff,

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

/

VERDICT

We, the jury, find as follows, as to Count V of the charges: (check one only)

✓ 1. The defendant is guilty of Kidnapping,

____ 2. The defendant is guilty of False Imprisonment,

____ 3. The defendant is not guilty.

So say we all in Melbourne, Brevard County, Florida this 5th day of September 1990.

[signature]
FOREPERSON

FILED IN OPEN COURT
This 5 Day Of Sept A.D. 1990
R.C. WINSTEAD, JR.
CLERK, CIRCUIT COURT 5:30 PM
BY [signature] D.C.

00144 224

TRM MAR

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.: 89-4942-CF-A

STATE OF FLORIDA,

Plaintiff,

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

September 27, 1990
Brevard County Courthouse
Melbourne, Florida

TRANSCRIPT OF ADVISORY VERDICT PROCEEDINGS

This cause came on to be heard at the time and place aforesaid, before the Honorable JOHN ANTOON, II, Circuit Judge, when and where the following proceedings were had, to wit:

APPEARANCES FOR THE STATE

CHRISTOPHER R. WHITE, ESQUIRE
PHILIP B. WILLIAMS, ESQUIRE
Assistant State Attorneys
551 South Apollo Boulevard
Melbourne, Florida 32901

APPEARANCES FOR THE DEFENDANT

JOHN ROBERSON PARKER, ESQUIRE
805 South Washington Avenue
Titusville, Florida 32780

DEPUTY OFFICIAL COURT REPORTER

CYNTHIA A. ANGELL, CSR

91-150346 - FSC 77,402
CROSLEY ALEXANDER
GREEN v. State Direct Appeal
Nielan - Brevard 89-4942

COPY

1 I N D E X

2 PAGE NO.

3 STATES WITNESSES

4 BOB RUBIN

5 Direct Examination by Mr. White 19
Voir Dire Examination by Mr. Parker 24
6 Direct Examination (Continued) by
Mr. White 31

7 RUSSELL COCKRIEL

8 Direct Examination by Mr. White 33

9 DANIEL KOPPER

10 Direct Examination by Mr. White 37
11 Voir Dire Examination by Mr. Parker 38
Direct Examination (Continued) by
12 Mr. White 39
Cross Examination by Mr. Parker 45

13 DEFENDANTS WITNESSES

14 SHIRLEY LEE ALLEN

15 Direct Examination by Mr. Parker 47
16 Cross Examination by Mr. White 52

17 DAMON JONES

18 Direct Examination by Mr. Parker 54

19 CHARGE CONFERENCE 59

20 FINAL ARGUMENT by Mr. White 108

21 FINAL ARGUMENT by Mr. Parker 132

22 ADVISORY VERDICT 160

23 CERTIFICATE OF REPORTER 166

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25

STATES EXHIBITS INDEX

NO.	DESCRIPTION	IN EVIDENCE
1	Criminal Registration Form	32
2	Fingerprint Card	36

DEFENDANTS EXHIBITS INDEX

NO.	DESCRIPTION	IN EVIDENCE

********** N O N E **********

1 MELBOURNE, FLORIDA, SEPTEMBER 27, 1990
2
3 (Whereupon, the following
4 proceedings were had in camera:)
5 THE COURT: The defendant is
6 present, and the attorneys are present.
7 I'm handing you what's Exhibit B.
8 MR. PARKER: I'm handing the court
9 the original of the instructions
10 submitted by the defense.
11 THE COURT: Okay. Maybe that will
12 take care of this.
13 Why switch it around, Rob? I see
14 aggravating circumstances outweighing
15 mitigating circumstances.
16 MR. WHITE: I have a set, also,
17 Judge, that I think may read the way
18 yours does.
19 THE COURT: Let's see yours.
20 MR. WHITE: And here's a paper
21 clip.
22 THE COURT: The only change I
23 would make to the one that Mr. White
24 has -- he's got it almost word for word
25 the way that I drafted mine over the

1 series of cases I've had, but where it
2 says "outweigh any mitigating
3 circumstances which are proven to
4 exist," I say "which may exist"
5 because I don't want there to be any
6 confusion regarding the burden.
7 MR. PARKER: I have no objection,
8 your Honor.
9 THE COURT: So that takes care of
10 all we have to do right now, I think.
11 Anyone else have anything that we need
12 to cover right now?
13 MR. PARKER: The State has
14 disclosed to me, your Honor, an
15 indictment and basically what appears
16 to be what I would term almost a
17 deferred prosecution certificate of
18 dismissal of indictment for successful
19 completion of probation involving what
20 appears to be a drug-related offense
21 out of the State of New Jersey
22 involving my client, and without any
23 other evidence or -- I don't believe
24 they can lay the proper predicate to
25 show that that Crosley Green is my

1 Crosley Green. There are no
2 fingerprints or anything of that
3 nature, and I would at this point in
4 time orally move that the court limit
5 the introduction of any evidence
6 involving that drug-related offense out
7 of New Jersey in any way, shape or
8 form.
9 MR. WHITE: These are the
10 documents he was referring to, your
11 Honor, and that's the extent of the
12 documentation that we have obtained.
13 Those records came to my attention
14 when I was reviewing the records from
15 the Office of Parole and Probation
16 here. There was just a blurb that
17 there was an arrest in New Jersey so we
18 made further inquires in the ID number
19 for Mr. Green and found those records,
20 but there are no fingerprints with
21 them.
22 THE COURT: The Motion in Limine
23 if there's nothing more is granted, but
24 you have Florida convictions, don't
25 you?

1 MR. WHITE: Yes, sir. There is
2 also a conviction in New York.
3 THE COURT: Is there a violent
4 felony conviction in Florida?
5 MR. WHITE: Not one prior to this
6 offense. The New York conviction is
7 for armed robbery with a shotgun.
8 THE COURT: Well, my ruling just
9 goes to these New Jersey cases.
10 MR. PARKER: We would
11 additionally -- and I have no case law,
12 Judge. I understand what the court's
13 ruling is going to be, but in light of
14 the fact that the conviction for the
15 crime of violence occurred in New York
16 and it occurred in 1977, we would
17 orally move this court to limit the
18 introduction of any of that testimony
19 in light of the remoteness of that
20 particular conviction, that it's remote
21 and that it has no -- it happened so
22 long ago that it shouldn't have any
23 bearing on this particular case.
24 However, it was --
25 THE COURT: You know, in the

1 federal rules when you're using prior
2 convictions for impeachment, there's a
3 ten-year rule. I think it's ten years,
4 but we don't have it in Florida even
5 there so I don't think we have it here
6 so the motion is denied.
7 MR. WHITE: For the court's
8 edification, in doing all the research
9 in preparation for this I ran across a
10 case where a 1950 conviction was used
11 on about a 1986 trial so I'm sure the
12 court is well within its bounds.
13 THE COURT: Anything else we need
14 to take care of right now?
15 Roy, did you see how many jurors
16 we have out there?
17 THE BAILIFF: We got all of them.
18 I got in them in the jury room.
19 THE COURT: Is that right? Let's
20 not keep them waiting.
21 THE BAILIFF: We got thirteen.
22 THE COURT: It's going to be hard
23 for you today because you have all
24 those people from Judge Richardson's
25 docket.

1 No. That's tomorrow he's got
2 docket sounding, not today. Make sure
3 that his bailiff -- I don't know who is
4 working with him -- knows they can't
5 use that jury room. I don't want them
6 walking in there with a bunch of
7 prisoners.
8 THE BAILIFF: I told them already.
9 THE COURT: Okay. Let's go.
10 MR. WHITE: One other thing on the
11 record before we leave. I gave you the
12 original of the instructions, and what
13 I've done is I've drafted instructions
14 with different permeations trying to
15 figure out what the court may do.
16 There's always argument about which
17 aggravating circumstances might apply
18 so there are four that are set forth in
19 there, and I drafted them two other
20 ways trying to anticipate where you
21 might go possibly. That is an original
22 and, if you would, not mark it up.
23 THE COURT: I already marked up
24 the first page.
25 MR. WHITE: That's fine, but just

1 hang onto it. We may need to copy it
2 and use it.
3 MR. PARKER: What I've done in
4 mine, Judge, is I've done a separate
5 and distinct page for each statutory
6 aggravating circumstance and each
7 mitigating circumstance. I believe
8 Mr. White has done it all on one page.
9 So that may cure the problem. You
10 might be able to hunt and mix and
11 insert.
12 THE COURT: You got a couple
13 issues I anticipate.
14 MR. PARKER: There's one other
15 thing, Judge. I had scheduled in my
16 office an office conference yesterday
17 with several witnesses that I
18 potentially may call today in this
19 cause. However, none of the witnesses
20 showed up at my office, and I would
21 request an opportunity at such point as
22 we get to the point where I call
23 witnesses to have a moment briefly to
24 talk with them. It shouldn't take me
25 but just a few minutes, but I want to

1 alert the court that I'm requesting
2 ahead of time maybe a brief recess so I
3 can speak with them before we call
4 them.
5 MR. WHITE: I keep thinking of
6 these things.
7 Also, the State had filed a motion
8 for the court to request that the
9 defendant elect whether he intends to
10 rely on the mitigating factor of
11 substantial criminal history, and I
12 gave Mr. Parker a copy of that, and he
13 indicated to me he wasn't quite sure
14 what he was going to do. I would ask
15 that the court inquire of him before we
16 go in whether or not he intends to rely
17 on that or not. Obviously, if he isn't
18 going to rely on it, then some of the
19 testimony regarding convictions of a
20 nonviolent nature would not be
21 admissible.
22 MR. PARKER: We are not going to
23 rely on that statutory mitigating
24 factor, and in that regard we would
25 move that the introduction of any other

1 felony convictions other than that one
2 that's pertinent involving the crime of
3 robbery in New York be excluded in a
4 limiting instruction from the court.
5 MR. WHITE: That would be
6 appropriate obviously, your Honor.
7 MR. PARKER: Unless at some time,
8 Judge -- certainly I can't imagine it,
9 but at some point in time his
10 conviction, narcotics conviction, here
11 in Florida may become relevant. I
12 don't think it is, but if it becomes
13 relevant for some other reason,
14 certainly you'll be faced with that.
15 We're not going to rely on the lack of
16 no substantial -- lack of substantial
17 criminal history so I don't see why --
18 MR. WHITE: All right.
19 THE COURT: Okay. The Motion in
20 Limine is granted based on the
21 representation of the defendant that
22 he's not going to rely on lack of prior
23 criminal record as a mitigating
24 circumstance, and I can't imagine how
25 that door would be opened except by

1 questions from you, Mr. Parker.
2 MR. PARKER: Yes, sir.
3 THE COURT: I know you wouldn't do
4 that without notice to the court, but
5 if the door were open, of course, the
6 State would then have an opportunity to
7 rebut.
8 MR. PARKER: No question.
9 How many witnesses are you going
10 to call.
11 MR. WHITE: With that in mind the
12 State would only need to call three
13 witnesses so our presentation will be
14 very brief. I'll tell you it will be
15 Bob Rubin and Russ Cockriel on the
16 fingerprints and Mr. Kopper.
17 MR. PARKER: Okay.
18 We may have three witnesses, your
19 Honor, and they'll be brief.
20 THE COURT: You want to make
21 opening statements here?
22 MR. PARKER: I just as soon as
23 proceed with testimony.
24 MR. WHITE: That's fine, your
25 Honor.

1 THE COURT: Okay.
2 MR. WHITE: Thinking back on it,
3 I'm not sure opening statements are
4 called for or not. I don't really
5 know. I don't think they are.
6 MR. PARKER: We never did one.
7 THE COURT: We've already pretty
8 much done it.
9 MR. WHITE: What?
10 THE COURT: We've already done it.
11 MR. WHITE: Well, I guess that's
12 true.
13 I don't think there's anything
14 wrong with it.
15 THE COURT: Okay.
16 (Whereupon, the proceedings in
17 camera were concluded.)
18 (Whereupon, the following
19 proceedings were had outside the
20 presence and hearing of the jury:)
21 THE BAILIFF: Order in the court.
22 All rise.
23 Circuit Court in and for Brevard
24 County, Eighteenth Judicial Circuit, is
25 now in session. The Honorable John

1 Antoon presiding.
2 You may be seated.
3 THE COURT: This is the case of
4 State of Florida versus Crosley
5 Alexander Green, No. 89-4942.
6 The defendant is present, and the
7 attorneys are present.
8 Please return the jury.
9 (Whereupon, the following
10 proceedings were had in the presence
11 and hearing of the jury:)
12 THE COURT: Please be seated,
13 ladies and gentlemen.
14 THE CLERK: When I call your name
15 please answer.
16 Elizabeth Eaton.
17 MS. EATON: Here.
18 THE CLERK: Alma Bloss.
19 MS. BLOSS: Here.
20 THE CLERK: Saveria Diomede.
21 MR. DIOMEDE: Here.
22 THE CLERK: Virginia Mros.
23 MS. MROS: Here.
24 THE CLERK: Harold Guiles.
25 MR. GUILES: Here.

1 THE CLERK: Bess Buchanan.
2 MS. BUCHANAN: Here.
3 THE CLERK: Frederick Bedle.
4 MR. BEDLE: Here.
5 THE CLERK: Theodore Bartholomew.
6 MR. BARTHOLOMEW: Here.
7 THE CLERK: Jeraldine Heiner.
8 MS. HEINER: Here.
9 THE CLERK: Lucille Driscoll.
10 MS. DRISCOLL: Here.
11 THE CLERK: Marie Haymond.
12 MS. HAYMOND: Here.
13 THE CLERK: Carole Adams.
14 MS. ADAMS: Here.
15 THE CLERK: Eudonna Davis.
16 MS. DAVIS: Here.
17 THE COURT: Ladies and gentlemen,
18 since the last time you were here in
19 the courtroom, have you read anything
20 or heard anything about this case? If
21 so, raise your hand.
22 There was some question as to
23 whether we were going to be able to
24 proceed today. As you recall, the
25 later date I picked caused a scheduling

1 conflict for two of you. I think Miss
2 Bloss was going to go to Pennsylvania
3 and Mr. Bedle was going to go to Fort
4 Myers. Fortunately, we've been able to
5 secure a courtroom for today, and we're
6 able to proceed today.
7 Please listen to the instructions
8 I'm about to give you.
9 Ladies and gentlemen of the jury,
10 you have found the defendant guilty of
11 felony murder in the first degree, two
12 counts of robbery with a deadly weapon
13 and two counts of kidnapping. The
14 punishment for the crime of murder in
15 the first degree is either death or
16 life imprisonment without the
17 possibility of parole for 25 years.
18 The final decision as to what
19 punishment shall be imposed rests
20 solely with the judge of this court.
21 However, the law requires that you, the
22 jury, render to the court an advisory
23 sentence as to what punishment should
24 be imposed upon the defendant.
25 The State and the defendant may

1 now present evidence relative to the
2 nature of the crime and the character
3 of the defendant. You're instructed
4 that this evidence when considered with
5 the evidence that you've already heard
6 is presented in order that you might
7 determine, first, whether sufficient
8 aggravating circumstances exist that
9 would justify imposition of the death
10 penalty, and, second, whether those
11 aggravating circumstances outweigh any
12 mitigating circumstances which may
13 exist.
14 At the conclusion of taking the
15 evidence and after argument of counsel
16 you'll be instructed on the factors in
17 aggravation and mitigation that you may
18 consider.
19 Mr. White.
20 MR. WHITE: Thank you, your Honor.
21 The State's first witness would be
22 Bob Rubin.
23
24 WHEREUPON,
25 BOB RUBIN,

1 a Witness herein, having been first duly sworn,
2 testified upon his oath as follows:
3
4 THE CLERK: Please be seated.
5 THE COURT: Sir, would you state
6 your full name, please.
7 THE WITNESS: Bob Phillip Rubin.
8 THE COURT: For the Court Reporter
9 would you spell your last name.
10 THE WITNESS: R-u-b-i-n.
11 THE COURT: You may inquire.
12 MR. WHITE: Thank you, your Honor.
13 DIRECT EXAMINATION
14 BY MR. WHITE:
15 Q. Sir, what is your occupation presently?
16 A. I'm a staff investigator for a local
17 law firm.
18 Q. Prior to that were you ever employed by
19 the State?
20 A. I was employed by the State of Florida,
21 Department of Corrections, as a parole officer.
22 Q. If you can remember, for what period of
23 time did you do that?
24 A. From 1977 to 1989.
25 Q. During the course of that time did you

1 have occasion to ever supervise a person known to
2 you as Crosley Alexander Green on parole?
3 A. Yes, I did.
4 Q. Do you recall when that was?
5 A. I have some notes. Can I refer to my
6 notes?
7 MR. WHITE: Any objection?
8 MR. PARKER: I'd sure like to see
9 them.
10 MR. WHITE: That's fine.
11 BY MR. WHITE:
12 Q. Could you pull those out of your
13 pocket.
14 Mr. Rubin, are those notes that you
15 recently made while reviewing the files from the
16 Parole and Probation Office?
17 A. Yes.
18 Q. Okay.
19 Sir, looking at those notes that you
20 made, would that refresh your recollection as to
21 the date that you came in contact with him?
22 A. Yes, sir.
23 Q. What is that date?
24 A. The original contact would have been
25 January 31st, 1978.

1 Q. Now, did you have occasion then to
2 actually meet with him on several occasions
3 during the course of that supervision?
4 A. Yes, sir.
5 Q. Was he supposed to report to you and
6 did he report to you as his parole officer?
7 A. Yes, sir.
8 Q. Do you see the person that you
9 supervised and knew as Crosley Alexander Green in
10 the courtroom?
11 A. Yes, sir.
12 Q. Would you indicate for the record where
13 he's seated.
14 A. He's the gentleman in the white shirt
15 with the stripes.
16 MR. WHITE: I'd like the record to
17 reflect he has identified the
18 defendant.
19 THE COURT: Any objection?
20 MR. PARKER: No objection.
21 THE COURT: The record will so
22 reflect.
23 BY MR. WHITE:
24 Q. The parole that you supervised him on,
25 do you recall where that parole was from?

1 A. The parole originated in the State of
2 New York.
3 Q. Do you recall what the offense was for
4 which he was on parole?
5 A. Armed robbery.
6 Q. Now, during the period of time that you
7 supervised this defendant, did you have occasion
8 to require him to go to the Sheriff's Department
9 to register as a felon?
10 A. Yes, I did.
11 Q. What caused you to do that?
12 A. On March 2nd, 1978, Mr. Green came to
13 my office and advised me that he needed some form
14 of identification for employment purposes and he
15 could not secure a birth certificate or any other
16 substantial form of identification so I suggested
17 to him that he register as a felon with the
18 Brevard County Sheriff's Department, that they
19 would have him complete a short form, photograph
20 him and take his fingerprints; and then with that
21 information and a letter issued by myself he
22 would be able to go down to the State Employment
23 Office and register there for seeking a job and
24 the Division of Driver's License to get an
25 identification card or driver's license.

1 Q. Did you accompany him to do that, or
2 did you just request that he do it and then he
3 left the office?
4 A. No. I walked him over to the Sheriff's
5 Office. I did that as a common practice.
6 Q. You know of your own knowledge that he
7 went there and he actually registered as a
8 convicted felon?
9 A. Yes, sir.
10 Q. Do you know from your experience
11 whether it's common practice that, when someone
12 does that, their fingerprints will be taken at
13 that time?
14 A. Yes, sir.
15 Q. Let me show you what's marked State's
16 Exhibit A for identification and ask you if you
17 recognize that.
18 A. Yes, sir. This is a standard Criminal
19 Registration Form used by the Brevard County
20 Sheriff's Department.
21 Q. Do you know the person whose signature
22 appears at the bottom certifying that as a true
23 and correct copy of the records?
24 A. Yes, I do. That's the records
25 supervisor with the Brevard County Sheriff's

1 Department.
2 Q. Were you present when she certified
3 that record?
4 A. Yes, I was.
5 Q. Were you and I both present, as a
6 matter of fact, obtaining that record from Miss
7 Nancy Jamache?
8 A. Yes, I was.
9 Q. Is the record in your hand the actual
10 microfilm of the original record that she had
11 there on file in her office?
12 A. Yes.
13 MR. WHITE: Your Honor, we'd offer
14 State's Exhibit A into evidence.
15 MR. PARKER: May I inquire
16 briefly?
17 THE COURT: Yes, sir.
18 VOIR DIRE EXAMINATION
19 BY MR. PARKER:
20 Q. Mr. Rubin, are you saying you were
21 present when this was filled out originally?
22 A. I believe I was present when it -- at
23 least when the process was begun. I may not have
24 stayed through the entire process.
25 Q. Your answer to my question would be

1 you're not sure?
2 A. I was there when it began. I'm not
3 sure that I was there when the process was
4 completed. I usually stayed through the time
5 they filled out the registration card but not
6 through the fingerprinting and the photographs.
7 Q. Do you have any idea how the Sheriff's
8 Department maintains their records as far as
9 security purposes?
10 A. No, sir.
11 Q. So when you look at this particular
12 document, you really don't know whether this is a
13 true and accurate certified copy of the actual
14 original document filled out?
15 A. The original document was microfilmed,
16 and I saw the microfilm.
17 Q. You don't know what was on that,
18 though, do you?
19 A. I don't understand the question.
20 Q. Microfilm is basically taking a picture
21 of a document, isn't it --
22 A. Correct.
23 Q. -- to preserve it?
24 Did you see what document was
25 photographed and preserved?

1 A. No, sir.
2 Q. So you don't know whether this
3 particular copy is a true and accurate copy of
4 what was photographed originally, do you?
5 A. If you're asking me if I was present
6 during the microfilming procedure, the answer is
7 no.
8 MR. PARKER: Your Honor, I would
9 object to the introduction of the
10 document on the basis of it's not
11 properly authenticated. A proper
12 predicate hasn't been laid.
13 MR. WHITE: Would the Court like
14 to see the document?
15 THE COURT: Roy, would you get my
16 Green book.
17 Come forward.
18 (Whereupon, the following
19 proceedings were had outside the
20 hearing of the jury:)
21 MR. WILLIAMS: Your Honor, that's
22 a self-authenticating document.
23 THE COURT: That's what I'm
24 looking at.
25 Your objection is authentication

1 and what else?
2 MR. PARKER: That is correct, your
3 Honor.
4 Although the argument is itself
5 authenticating, there is certain
6 foundation, I believe, that's still
7 necessary to show that it was
8 maintained in the usual course of
9 business, that it was secured, that
10 only certain people had access to it
11 and that this particular document was
12 one of those documents that was
13 certified under those circumstances.
14 MR. WHITE: If that were true,
15 Judge, I don't see how it could be
16 called self-authenticating.
17 THE COURT: As I understand your
18 objection, you're making two
19 objections. One is hearsay.
20 MR. PARKER: Well, obviously it's
21 a hearsay objection, your Honor. Then
22 they moved to it was itself a
23 self-authenticating document.
24 THE COURT: It's got the seal.
25 That's all that's required under 1(a)

1 and 4 of 902 so the objection based on
2 self-authentication is overruled, the
3 Sheriff's Department being a political
4 subdivision department and it's got the
5 seal. Apparently even without the seal
6 it would be if it had the appropriate
7 signature.
8 Are you calling someone from the
9 Sheriff's Department to show that it's
10 a business record?
11 MR. WHITE: I had intended on
12 calling her. She said she had a bunch
13 of things scheduled and she didn't want
14 to come. She's on standby, but it
15 would take an hour to get her here.
16 I think Mr. Rubin could establish
17 that these records are normally kept.
18 I think the statute established that
19 felons are required to register with
20 the sheriff when they go into a county.
21 MR. WILLIAMS: Judge, on the point
22 of the evidentiary objection under the
23 business records exception, Section
24 803(6), it says that the custodian of
25 records or other qualified person can

1 attest to these records being normally
2 kept in the course of business.
3 I think Mr. Rubin testified for
4 nearly some 13 years that he's been
5 walking people over there and
6 registering them as felons with this
7 one particular form and it's kept with
8 the Sheriff's Department and that's how
9 it's filed and his custom and practice
10 is that he watched at least the
11 beginning of the form being filled out
12 and very familiar with the form so in
13 this instance, as a matter of fact, he
14 did watch it so he would be a qualified
15 person.
16 Also, the State is offering it
17 under public records from the court
18 exception which does not require a
19 custodian which it is the hearsay
20 exception which doesn't even require a
21 custodian.
22 So on either one of those theories
23 we submit that we've met our burden of
24 showing it falls within the inner
25 exception of hearsay.

1 THE COURT: You may be right. It
2 seems you've got that exception to
3 hearsay.
4 Any other objections besides this?
5 MR. PARKER: No, your Honor. I
6 understand that it's basically a
7 self-authenticating document, but my
8 objection further is that it's
9 incompetent and it's hearsay and that
10 notwithstanding the seals and, in
11 effect, these signatures that no one
12 can --
13 THE COURT: Take the hearsay
14 argument apart from the
15 self-authentication.
16 MR. PARKER: Right.
17 THE COURT: They say that they
18 established for Mr. Rubin that he knows
19 that these records are kept in the
20 regular course of business by the
21 sheriff.
22 MR. WHITE: I would also point out
23 to the Court that in Line 21 in Part 1
24 it states:
25 "Any such evidence which the Court

1 deems to have probative value may be
2 received regardless of its
3 admissibility under the exclusionary
4 rules of evidence provided the
5 defendant is accorded a fair
6 opportunity to rebut any hearsay
7 statements."
8 THE COURT: The objection is
9 overruled.
10 (Whereupon, the following
11 proceedings were had within the hearing
12 of the jury:)
13 DIRECT EXAMINATION (CONTINUED)
14 BY MR. WHITE:
15 Q. If I could, let me just ask you a
16 couple other questions.
17 Now, during the period of time that you
18 worked as a parole officer after this time, did
19 you make it a common practice to take persons
20 that you supervised on parole to the Sheriff's
21 Department to the same place --
22 A. Yes, sir.
23 Q. -- to register as a felon?
24 A. Yes, sir.
25 Q. Do you know if, in fact, the Sheriff's

1 Department records office was, in fact, the place
2 which accepted those registrations and kept those
3 registrations?
4 A. Yes, sir.
5 THE COURT: State's Exhibit A for
6 identification is received into
7 evidence as Exhibit 1.
8 (Whereupon, State's Exhibit A was
9 received into evidence as State's
10 Exhibit 1.)
11 MR. WHITE: I don't have any other
12 questions of this witness, your Honor.
13 THE COURT: Mr. Parker?
14 MR. PARKER: No questions.
15 THE COURT: You may step down,
16 sir.
17 MR. WHITE: Our next witness would
18 be Russell Cockriel.
19
20 WHEREUPON,
21 RUSSELL COCKRIEL,
22 a Witness herein, having been first duly sworn,
23 testified upon his oath as follows:
24
25 THE CLERK: Please be seated.

1 THE COURT: Sir, what is your full
2 name?
3 THE WITNESS: Russell George
4 Cockriel.
5 DIRECT EXAMINATION
6 BY MR. WHITE:
7 Q. Mr. Cockriel, I know you've testified
8 before, but would you remind us where you are
9 employed.
10 A. Brevard County Sheriff's Office.
11 Q. Do you have any specialty that you
12 practice there for that department?
13 A. Yes. I'm one of the department's
14 fingerprint examiners.
15 Q. As a fingerprint examiner do you
16 examine latent prints against inked known prints
17 of persons to determine whether or not the same
18 person made both prints?
19 A. Yes.
20 Q. How long have you done that?
21 A. About twelve years.
22 Q. You testified previously in courts of
23 law in this field?
24 A. Yes.
25 Q. Sir, let me show you what's marked

1 State's Exhibit C and ask you if you recognize
2 that.
3 A. Yes.
4 Q. Now, do you know whether or not the
5 Brevard County Sheriff's Department keeps
6 fingerprints of persons who register as convicted
7 felons?
8 A. Yes.
9 Q. That card there, is there an indication
10 as to whether that is a fingerprint card that was
11 taken in conjunction with a registration of a
12 convicted felon?
13 A. Yes.
14 Q. Do you recognize the signature of the
15 person who took the ink prints on that card?
16 A. Yes, I do.
17 Q. What is that person's name?
18 A. Dave Plowden.
19 Q. Did you know Mr. Plowden when he was
20 employed with the Sheriff's Department?
21 A. Yes.
22 Q. What was his area of expertise?
23 A. He was a fingerprint examiner with the
24 Sheriff's Office, also.
25 Q. As a fingerprint examiner would

1 Mr. Plowden have been competent to take ink
2 prints from someone registering on a criminal
3 parole?
4 A. Absolutely.
5 Q. Have you had an occasion to examine
6 that document and compare it with rolled ink
7 prints that are known to be the prints of Crosley
8 Alexander Green?
9 A. Yes.
10 Q. What was the result of that
11 examination?
12 A. They were identical to the fingerprints
13 belonging to Crosley Green.
14 Q. Do you have an opinion as to whether or
15 not the same person actually made both the prints
16 on that card marked State's Exhibit C and on the
17 card bearing the known prints of Crosley
18 Alexander Green?
19 A. Yes.
20 Q. What is that opinion?
21 A. That they were made by one in the same
22 person.
23 Q. Thank you, sir.
24 MR. WHITE: I don't have any other
25 questions.

1 MR. PARKER: No questions.
2 THE COURT: You may step down,
3 sir.
4 MR. WHITE: We'd offer this card
5 into evidence, your Honor.
6 THE COURT: That will be received
7 as Exhibit 2 for the State.
8 (Whereupon, State's Exhibit C was
9 received into evidence as State's
10 Exhibit 2.)
11 MR. WHITE: The State's next
12 witness is Daniel Kopper.
13
14 WHEREUPON,
15 DANIEL KOPPER,
16 a Witness herein, having been first duly sworn,
17 testified upon his oath as follows:
18
19 THE CLERK: Please be seated.
20 THE COURT: Sir, what is your full
21 name?
22 THE WITNESS: Daniel G. Kopper.
23 THE COURT: Spell your last name.
24 THE WITNESS: K-o-p-p-e-r.
25 /////

1 DIRECT EXAMINATION
2 BY MR. WHITE:
3 Q. Sir, where are you employed now?
4 A. The City of Batavia Police Department
5 in Batavia, New York.
6 Q. Do you recall where you were employed
7 back in 1976?
8 A. Yes, sir.
9 Q. Where was that?
10 A. The village of Albion in New York
11 State.
12 Q. What were you doing there? What was
13 your employment?
14 A. Police officer.
15 Q. As a police officer did you have
16 occasion and specifically on April the 18th of
17 1976 to come in contact with someone named
18 Crosley Alexander Green?
19 A. Yes, sir.
20 Q. Do you see that person here in the
21 courtroom?
22 A. Yes, sir.
23 Q. Where do you see him?
24 A. The gentleman with the blue and white
25 striped shirt (indicating).

1 MR. WHITE: I'd like the record to
2 reflect that he has identified the
3 defendant.
4 THE COURT: Any objection?
5 MR. PARKER: Well, may I inquire?
6 VOIR DIRE EXAMINATION
7 BY MR. PARKER:
8 Q. How long ago was it you last saw
9 Mr. Green, Officer Kopper?
10 A. That would have been in '74 --
11 '76.
12 Excuse me.
13 Q. Have you seen Mr. Green since that
14 time?
15 A. Not before today, no.
16 Q. Prior to that date in 1976 had you ever
17 seen him before?
18 A. Yes.
19 Q. Do you know him to talk to him?
20 A. Yes.
21 Q. Do you know how old he was at that
22 time?
23 A. No, not exactly, sir.
24 Q. Was he a teenager at that time?
25 A. Yes, sir.

1 Q. Do you have any idea what his age was
2 at that time?
3 A. If I'm not mistaken, 16 or 17, in that
4 general area.
5 MR. PARKER: Thank you.
6 No objection.
7 THE COURT: The record will so
8 reflect.
9 DIRECT EXAMINATION (CONTINUED)
10 BY MR. WHITE:
11 Q. On the date mentioned, April the 18th
12 of 1976, how was it that you came to come in
13 contact with him?
14 A. A telephone call came into the police
15 department of a robbery of a local gas station on
16 Route 31 in the village of Albion which another
17 parole officer and myself responded to.
18 Q. When you responded there, did you find
19 someone there who was the victim of that robbery?
20 A. Yes, sir. There was a young man that
21 was in the gas station at the time that stated he
22 had been robbed by two --
23 MR. PARKER: Your Honor, I'm going
24 to object. That's hearsay, and I'll
25 stand on that objection.

1 THE COURT: Sustained.
2 BY MR. WHITE:
3 Q. Now, during the course you interviewed
4 this young man, and he indicated to you what had
5 occurred; is that correct?
6 A. Yes, sir.
7 Q. Based upon that you began an
8 investigation?
9 A. Yes, sir.
10 Q. Were you looking for one or more
11 suspects?
12 A. More than one.
13 Q. How many?
14 A. Two.
15 Q. Did you, in fact, locate one of those
16 two suspects?
17 A. Yes, sir.
18 Q. Which one did you locate first?
19 A. A young man by the name of Hardy.
20 Q. Did you, in fact, interview this young
21 man named Hardy?
22 A. Yes, sir.
23 Q. Would you relate to us if you would,
24 please, did Mr. Hardy confess to being involved
25 in this crime?

1 MR. PARKER: Again, I object, your
2 Honor. That's hearsay.
3 THE COURT: Sustained.
4 MR. WHITE: I'm sorry, your Honor,
5 if I may.
6 THE COURT: Come forward.
7 (Whereupon, the following
8 proceedings were had outside the
9 hearing of the jury:)
10 MR. WHITE: Mr. Hardy's
11 statement -- and the reason I asked did
12 he confessed without listing what he
13 said first is to establish the
14 predicate did he confess to a crime
15 which would be a statement against
16 penal interest. It was made by Hardy
17 which is clearly an exception to a
18 hearsay rule.
19 THE COURT: Subsection 18.
20 MR. PARKER: The problem I have,
21 your Honor, is that Mr. Hardy nor any
22 statement of Mr. Hardy has been
23 disclosed to me. Now, it may be an
24 exception under certain circumstances
25 where the defendant had an opportunity

1 to properly prepare and talk to
2 Mr. Hardy and have a statement from
3 Mr. Hardy. I don't have any of that,
4 and this is the first I heard about
5 Mr. Hardy and statements from
6 Mr. Hardy.
7 Now, you know, I recognize the
8 State's argument but --
9 THE COURT: Well, let me take care
10 of the hearsay objection first, and
11 then if you have any other objections,
12 I'll take care of those.
13 MR. WHITE: Judge --
14 THE COURT: Yeah.
15 MR. WHITE: -- in looking at that
16 I don't know that that exception
17 applies.
18 MR. WILLIAMS: 804, Judge.
19 THE COURT: 804?
20 MR. WILLIAMS: Yes.
21 Under 2(c) I don't think we can --
22 Take a look at 804(2)(c) around
23 the inside of the page there, the last
24 sentence in (c).
25 THE COURT: There's a double

1 negative in that last sentence.
2 MR. PARKER: I appreciate that
3 they point that out. I think that 2(c)
4 statement, the last sentence --
5 MR. WILLIAMS: We'll move on.
6 THE COURT: Thanks.
7 (Whereupon, the following
8 proceedings were had within the hearing
9 of the jury:)
10 BY MR. WHITE:
11 Q. Sir, we're going to move on from the
12 last question. Let me ask you a different one.
13 During the course of the investigation
14 did you participate in attempting to locate this
15 defendant, Crosley Alexander Green?
16 A. Yes, sir.
17 Q. Were you present when he was, in fact,
18 located?
19 A. Yes, sir.
20 Q. Was he, in fact, charged with any
21 offense after he was located?
22 A. Yes, sir.
23 Q. What was that offense?
24 A. Robbery -- armed robbery.
25 Excuse me.

1 Q. I was going to ask you, in New York do
2 you differentiate between armed robbery and
3 simple robbery?
4 A. Yes, sir.
5 Q. The charge that he had placed against
6 him was --
7 A. -- armed robbery.
8 Q. All right, sir.
9 Now, how large a metropolitan area is
10 Albion?
11 A. It's only approximately 5,000 people.
12 Q. Is that why this particular case stands
13 out in your mind?
14 A. Yes, sir.
15 Q. Did you get robbery cases, murder
16 cases, those sorts of things, very often while
17 you worked there?
18 A. No, sir. They weren't very common at
19 all.
20 Q. Did you follow what happened to
21 Mr. Green in the Court system after you made your
22 case?
23 A. The only involvement that I had --
24 approximately two months after the arrest of
25 Mr. Green I left that police department and went

1 to the City of Batavia. The only involvement I
2 had after that was I was notified sometime
3 later -- I couldn't say exactly when -- that a
4 plea bargain deal had been arranged and the
5 defendant had pled guilty to robbery.
6 Q. Was it your understanding that he
7 was -- whether or not he was sentenced as a
8 youthful offender?
9 A. Yes, sir.
10 Q. Was he?
11 A. Yes, sir.
12 MR. WHITE: I don't have any other
13 questions.
14 CROSS EXAMINATION
15 BY MR. PARKER:
16 Q. As far as you know, Officer Kopper, he
17 was sentenced as a youthful offender because he
18 was a kid at the time; is that right?
19 A. What is your definition of "a kid"? I
20 don't understand the question.
21 MR. PARKER: No further questions,
22 your Honor.
23 MR. WHITE: Nothing further, your
24 Honor.
25 THE COURT: You may step down,

1 sir.

2 MR. WHITE: Your Honor, the State

3 would rest its portion of the

4 evidence.

5 MR. PARKER: Your Honor, I would

6 respectfully request about 15 minutes

7 before we proceed with potentially any

8 witnesses the defense may call.

9 THE COURT: Ladies and gentlemen,

10 we're going to take an early

11 mid-morning recess which means you

12 might get a couple before lunch. I

13 don't know. Please be back and ready

14 to go at 10:15.

15 THE BAILIFF: Court will be in

16 recess until 10:15.

17 (Whereupon, a recess was taken.)

18 (Whereupon, the following

19 proceedings were had outside the

20 presence and hearing of the jury:)

21 THE BAILIFF: Remain seated. This

22 court is back in session.

23 THE COURT: We have the defendant

24 present. The attorneys are present.

25 Please return the jury.

1 (Whereupon, the following
2 proceedings were had in the presence
3 and hearing of the jury:)
4 THE COURT: Please be seated,
5 ladies and gentlemen.
6 MR. PARKER: At this time the
7 defense would call Miss Shirley Green.
8
9 WHEREUPON,
10 SHIRLEY LEE ALLEN,
11 a Witness herein, having been first duly sworn,
12 testified upon her oath as follows:
13
14 THE CLERK: Please be seated.
15 THE COURT: What is your full
16 name, ma'am?
17 THE WITNESS: Shirley Lee Allen.
18 THE COURT: Shirley?
19 THE WITNESS: Shirley Lee Allen.
20 THE COURT: A-l-l-e-n?
21 THE WITNESS: Yes.
22 THE COURT: You may inquire.
23 DIRECT EXAMINATION
24 BY MR. PARKER:
25 Q. Miss Allen, do you know Crosley Green?

1 A. Yes, I do.
2 Q. How do you know Crosley?
3 A. He's my brother.
4 Q. Was your name originally Green?
5 A. Yes, it is.
6 Q. How old are you, ma'am?
7 A. 40.
8 Q. Do you live in north Brevard or
9 Titusville, Mims area?
10 A. I live in Mims.
11 Q. Do you understand why you're here, Miss
12 Allen?
13 A. Yes.
14 Q. Do you understand that the jury has to
15 make a recommendation to the Court as to whether
16 or not they believe the death penalty should be
17 imposed in this case?
18 A. Yes.
19 Q. Is your mother and father alive?
20 A. No, they're not.
21 Q. Can you tell the Court or the jury,
22 please, when they passed away.
23 A. April the 15th, 1977.
24 Q. Would you tell the Court how your
25 mother died and how your father died.

1 A. Well, we were living at 55 Browns
2 Avenue. I was at work, and we got a phone call
3 that say that my father -- that my mother had a
4 tragic accident. When I got to the home, I was
5 told that my father had killed my mother.
6 Q. Did the police tell you that?
7 A. Yes.
8 Q. Did they tell you how your father had
9 killed your mom?
10 A. Yes.
11 Q. How was that?
12 A. They said my father had shot my mother
13 and then turned the gun on himself.
14 Q. When you say "turned the gun on
15 himself," shot himself?
16 A. Shot himself.
17 Q. They both died as a result of that
18 particular incident?
19 A. Yes.
20 Q. Do you know how old Crosley was at the
21 time your father killed your mother and then
22 killed himself?
23 A. I'm not sure. He was between the ages
24 of 17 or 18 maybe.
25 Q. How many children were in your family,

1 ma'am?
2 A. Eleven.
3 Q. Do you have a sister by the name of Dee
4 Dee?
5 A. Yes.
6 Q. Do you know how old Dee Dee was at the
7 time?
8 A. Fifteen.
9 Q. Was Dee Dee the one who found your
10 parents?
11 A. Yes, she was.
12 Q. Did you and your family, your brothers
13 and sisters, ever have an opportunity to talk
14 about the loss of your parents in that way?
15 A. No, we didn't.
16 Q. Do you know why it is you couldn't talk
17 about that?
18 A. At the time we all was hurting and
19 everybody was to theirself.
20 Q. Did you ever have a chance to discuss
21 the loss of your parents with my client, Crosley
22 Green?
23 A. A few times.
24 Q. Can you describe how he reacted to
25 those discussions.

1 A. It was just like we would have a
2 disagreement. He would always say, "I wish daddy
3 and mama was living. Things wouldn't be like
4 this" and on and on.
5 Q. Does Crosley have a son?
6 A. Yes, he does.
7 Q. What's his son's name? Gaston?
8 A. Gaston.
9 Q. How old is Gaston?
10 A. I think he's six now, five or six.
11 Q. Have had you a chance to see Crosley
12 and Gaston interact as father and son?
13 A. Lots of times.
14 Q. Can you describe their relationship for
15 the jury and the Court.
16 A. Well, he picks him up from his mother,
17 takes him out to the park. Occasionally he would
18 get my car or my sister Celes's car, and there
19 were a number of times he got him and spent the
20 night with him.
21 Q. How would you describe their
22 relationship?
23 A. A loving father and son relationship.
24 Q. If you had to make a recommendation to
25 the jury as to what you think an appropriate

1 penalty would be in this case, what would that
2 recommendation be?
3 MR. WHITE: Objection, your
4 Honor. It would be irrelevant and
5 immaterial what her recommendation
6 would be.
7 THE COURT: Sustained.
8 MR. PARKER: No further questions,
9 your Honor.
10 CROSS EXAMINATION
11 BY MR. WHITE:
12 Q. Is it Mrs. Allen?
13 A. Yes.
14 Q. Okay. Mrs. Allen, at the time that
15 your mother and your father died Crosley wasn't
16 living here in Florida, was he?
17 A. No.
18 Q. He was in New York?
19 A. Yes.
20 Q. And at that time I believe he was
21 incarcerated, in prison, and had to be furloughed
22 to come to the funeral, didn't he?
23 A. Yes, he did.
24 Q. Prior to that time when he got in
25 trouble in New York, he was up there living on

1 his own, wasn't he?

2 A. He was with my grandfather.

3 Q. Living with your grandfather?

4 A. Yes.

5 Q. Your parents and you and all the other

6 brothers and sisters were down here in Florida,

7 weren't you?

8 A. Yes.

9 Q. Living in the Titusville area?

10 A. Yes.

11 Q. Now, you indicated Crosley has a son.

12 Were he and the boy's mother ever married?

13 A. No, they wasn't.

14 Q. Have they ever lived together in a home

15 together with the child?

16 A. Yes, they have.

17 Q. How long ago was that?

18 A. Well, they lived together until, I

19 think, Gaston was about a little over a year old.

20 Q. Since that time Crosley has lived

21 separately from Gaston and his mother?

22 A. Yes.

23 Q. It is his mother who has Gaston; is

24 that right?

25 A. Yes.

1 Q. Thank you, ma'am.
2 MR. WHITE: I don't have any
3 further questions.
4 MR. PARKER: No questions.
5 THE COURT: You may step down,
6 ma'am.
7 MR. PARKER: Your Honor, the
8 defense would call Mr. Damon Jones.
9
10 WHEREUPON,
11 DAMON JONES,
12 a Witness herein, having been first duly sworn,
13 testified upon his oath as follows:
14
15 THE CLERK: Please be seated.
16 THE COURT: Sir, what is your full
17 name?
18 THE WITNESS: Damon Jones, Jr.
19 DIRECT EXAMINATION
20 BY MR. PARKER:
21 Q. Mr. Jones, do you know why you're here
22 to testify?
23 A. Yes, I do.
24 Q. Do you understand that the jury has to
25 make a recommendation to the court about whether

1 or not Mr. Green should be executed or not?
2 A. Yes, I do.
3 Q. Do you know Mr. Crosley Green?
4 A. Yes, I do.
5 Q. How long have you known Crosley?
6 A. Pretty near all my life.
7 Q. How would you describe your
8 relationship? Friends?
9 A. Friends.
10 Q. Good friends?
11 A. Good friends.
12 Q. I want to draw your attention back to
13 several years ago. You and he were out of
14 state. Can you tell the jury about the incident
15 that occurred at the lake.
16 A. Well, I'm the type of person I try
17 almost anything, and at this time in my life I
18 couldn't swim and went out in deep water and
19 almost got drowned. If it wasn't for Papa, I
20 would have, you know, drowned, and he saved my
21 life.
22 Q. When you say "Papa," are you talking
23 about Crosley?
24 A. Crosley.
25 Q. Do you know him as Papa Green?

1 A. I know him as Papa Green.
2 Q. Did we, you and I, did we have some
3 discussions about the fact that you would be
4 testifying here today?
5 A. Yes.
6 Q. Could you tell the jury, please, what
7 you told me regarding why you think you're here
8 today.
9 A. I think --
10 MR. WHITE: I object your Honor.
11 If I could, let me offer the objection.
12 The question would seem to call
13 for an answer that wouldn't be relevant
14 and material as to why he thinks he is
15 here today.
16 THE COURT: Sustained.
17 BY MR. PARKER:
18 Q. Did you think you were dying in that
19 lake?
20 A. Yes, I did.
21 Q. And Mr. Green saved your life?
22 A. Yes, he did.
23 Q. Do you think Mr. Green could make
24 some --
25 Strike that.

1 What is your profession, sir?
2 A. I'm a roofer. I'm a minister.
3 Q. Were you aware of the death of
4 Crosley's parents?
5 A. Yes, I was.
6 Q. When was it you first heard about how
7 his parents died?
8 A. It's been years. I was a boy.
9 Q. Are you older than Crosley?
10 A. We either the same age or he may be a
11 year older, I think, something like that.
12 Q. Do you recall hearing about the deaths
13 of his parents? You were a boy at that time?
14 A. I was a boy at that time.
15 Q. Do you know how old you were exactly?
16 A. No, I don't.
17 Q. Did you ever have a chance to talk with
18 Crosley about how he felt about his parents, the
19 way they died?
20 A. No, I didn't.
21 MR. PARKER: No further questions,
22 your Honor.
23 MR. WHITE: No questions, your
24 Honor.
25 THE COURT: You may step down,

1 sir.

2 MR. PARKER: Your Honor, we have

3 no further witnesses.

4 THE COURT: Okay, ladies and

5 gentlemen. You'll have another break.

6 Counsel, come forward.

7 (Whereupon, the following

8 proceedings were had outside the

9 hearing of the jury:)

10 THE COURT: We'll let them go

11 until one o'clock. That will give us

12 time to go over the instructions.

13 MR. PARKER: That's fine.

14 MR. WILLIAMS: I think that would

15 be a good idea, and we can eat.

16 THE COURT: Okay.

17 (Whereupon, the following

18 proceedings were had within the hearing

19 of the jury:)

20 THE COURT: Rather than break up

21 your day unnecessarily I'm going to ask

22 you to come back at one o'clock. That

23 way you can begin work and stay at work

24 for a while rather than stopping and

25 starting which would happen if I just

1 gave you a break at this time. I'll
2 see you back here at one o'clock.
3 (Whereupon, the following
4 proceedings were had outside the
5 presence and hearing of the jury:)
6 THE COURT: Can I see counsel in
7 chambers. We're going to convene to
8 chambers.
9 THE BAILIFF: Court will be in
10 recess until 1 p.m.
11 (Whereupon, the following
12 proceedings were had in camera:)
13 THE COURT: Mr. White, did I hand
14 you your instructions you gave me back,
15 or did I leave them on the bench?
16 MR. WHITE: Well, I'm not sure
17 where you left them, but you didn't
18 give them back.
19 THE COURT: Okay. The defendant
20 is present, and the attorneys are
21 present.
22 Mr. White, what are you requesting
23 with regard to aggravating
24 circumstances?
25 MR. WHITE: Your Honor, we would

1 request four aggravating circumstances
2 be instructed to the jury:
3 First, that this murder occurred
4 during the course of a felony which I
5 submit is proven by the convictions for
6 robbery and kidnapping which were
7 returned by the jury previously in the
8 case.
9 Secondly would be that the
10 defendant has previously been convicted
11 of a violent felony which I submit is
12 proven two ways: First, by the robbery
13 conviction in New York that we heard
14 testimony about this morning which was
15 an armed robbery and, secondly, by the
16 convictions in this case of the
17 kidnapping and robbery of Kim Hallock;
18 and I know the court is well aware of
19 the case law in that regard, and it's
20 changed over the last four or five
21 years, and it used to be that the
22 robbery or kidnapping against Mr. Flynn
23 that preceded his death could have been
24 considered. The law now is that that
25 cannot be considered, but being that

1 Kim Hallock is a separate victim, the
2 case law would clearly allow the jury
3 to consider and the court to consider
4 that as an aggravating factor based on
5 the separate crimes against her.
6 The third would be that the
7 crime -- the murder was committed in a
8 heinous, atrocious and cruel fashion,
9 and fourth would be that it was
10 committed for financial gain.
11 THE COURT: Mr. Parker.
12 MR. PARKER: Your Honor, first of
13 all, we would object to the
14 instructions --
15 Do you want me to address his or
16 as far as the statutory mits first or
17 does it matter?
18 THE COURT: Well, let's deal with
19 aggravating circumstances first and
20 then mitigating circumstances second.
21 MR. PARKER: All right, Judge.
22 The crime for which the defendant
23 is to be sentenced was committed for
24 financial gain and the fact that it was
25 committed during the course of a

1 robbery, I would argue that those two
2 aggravating circumstances would merge
3 at this point in time and can only be
4 accomplished in one instruction or can
5 only be one aggravating circumstance.
6 That argument is based on the fact that
7 it was an ongoing transaction that
8 began at Holder Park and ended at this
9 orange grove, and in light of the fact
10 that the testimony was quite specific
11 about the motive being robbery in this
12 instance, those two particular
13 aggravating circumstances should merge.
14 I have a couple of cases on that
15 point, Judge. Campbell v. State which
16 is at 15 FLW Fla.S.Ct. 342. It's a
17 June 14th, 1990, case.
18 THE COURT: 15 FLW what?
19 MR. PARKER: 342, Supreme Court
20 342.
21 THE COURT: Okay.
22 MR. PARKER: Basically they talk
23 about commission of a felony in the
24 course of an armed robbery and a
25 burglary and pecuniary gain should be

1 counted as one factor, not two factors,
2 where the underlying offense was a
3 burglary or a robbery.
4 And I would also cite the case of
5 Richardson v. State, Florida Supreme
6 Court at 437 1091, again talking about
7 where two of the enumerated aggravating
8 circumstances were that the murder was
9 committed while the defendant was
10 engaged in the crime of burglary and
11 that the murder was committed for
12 financial gain. Where the facts
13 supporting such two circumstances were
14 the same, they could not be used to
15 support two separate aggravating
16 circumstances.
17 The indictment, your Honor, as to
18 the felony murder charges basically my
19 client with the killing of Mr. Flynn
20 basically while in the perpetration of
21 a robbery while he carried a firearm,
22 and that it goes on to "and/or did then
23 and there forcibly, secretly or by
24 threat confine, abduct or imprison
25 Charles Flynn and Kim Hallock against

1 their will with the intent to commit or
2 facilitate the commission of a felony,
3 to wit: robbery."
4 And it goes on, and this final
5 language is what gives the court that,
6 "or inflict bodily harm upon or
7 terrorize said victims or another
8 person."
9 And at this point in time I would
10 argue there's no evidence to suggest
11 that that particular wording of the
12 indictment should apply because there's
13 no testimony to show that killing
14 occurred while he was trying to inflict
15 bodily harm or injury or terrorize
16 anybody but that it occurred in the
17 process and during the course of a
18 robbery.
19 As to heinous, atrocious and
20 cruel, your Honor, and with the
21 definition that I provided the court in
22 which I don't believe there will be any
23 objection to the reading, heinous,
24 atrocious and cruel is provided all the
25 courts in the State of Florida -- I

1 mean that particular definition, the
2 court's have struggled with that
3 definition for years, and nobody really
4 seems to be able to really properly
5 define it.
6 THE COURT: Well, I think that the
7 Florida instruction was approved --
8 MR. PARKER: I would say that's --
9 THE COURT: -- inferentially at
10 least in -- was it the Maynord case?
11 MR. PARKER: Well, the case that I
12 took it from --
13 MR. WHITE: Actually if I may
14 interject, I think I have a copy of it
15 here. The Florida Supreme Court really
16 officially amended the standard
17 instruction this past year --
18 THE COURT: They amended it to do
19 what we have been doing I think, didn't
20 they?
21 MR. PARKER: I have that
22 definition here.
23 MR. WHITE: -- and added the
24 definitions of heinous and atrocious
25 and cruel which flushed it out and I

1 submit under the law would have given
2 the immediate definition to make it
3 less ambiguous.
4 That language was what I used
5 verbatim in my instruction. Mr. Parker
6 used language that's almost identical
7 in the instruction he prepared.
8 THE COURT: What's the
9 difference?
10 MR. WHITE: He knows. I'm not
11 quite sure.
12 MR. PARKER: Well, do you have his
13 instruction in front of you, your
14 Honor?
15 THE COURT: Yes, sir.
16 MR. PARKER: This is the
17 definition as I've cited it directly
18 from the United States Supreme Court
19 case.
20 THE COURT: It states: "What is
21 intended to be included are those
22 capital crimes where the actual
23 commission of the capital felony was
24 accomplished by such additional acts."
25 Mr. White, is the one that you

1 gave me the one that the Supreme Court
2 of Florida has approved?
3 MR. WHITE: Yes, sir.
4 THE COURT: I think they're saying
5 the same thing. They use the same key
6 language. It's a little different
7 grammatically, I think.
8 The sentence he proposes starts
9 out: "The kind of crime intended to be
10 included as heinous, atrocious and
11 cruel is one accompanied by additional
12 facts," et cetera.
13 What you got is: "What is
14 intended to be included are those
15 capital crimes where the actual
16 commission of the capital felony was
17 accompanied by such additional facts,"
18 et cetera.
19 MR. PARKER: We've discussed the
20 wording, and I have no objection to
21 that wording being used, your Honor.
22 THE COURT: Anything else with
23 regard to heinous, atrocious and
24 cruel?
25 MR. PARKER: The only thing I

1 would do, Judge, is cite again the
2 Campbell case at 15 FLW 342 again, the
3 June 14th, 1990, case, and also I would
4 cite Hargrave v. State which is a
5 Florida Supreme Court case, June 30,
6 1978. That's cited at 366 So.2d, Page
7 1.
8 Those two particular cases give
9 the court good guidance as to the facts
10 that the Supreme Court looks at when
11 setting what is -- setting those cases
12 apart from the -- I hate to use the
13 general run-of-the-mill homicide cases
14 but, in fact, that's colloquial what
15 I'm saying.
16 In Hargrave, the defendant in that
17 case while in the course of
18 perpetrating a robbery shot the victim
19 twice in the chest. The victim was not
20 dead. The victim lived for a period of
21 time, and then at some subsequent point
22 in time without any real reason other
23 than to eliminate the possibility of a
24 witness he turned and fired a third
25 shot into the head of the victim. The

1 court found that those circumstances
2 certainly fell within those cases that
3 could be considered as heinous,
4 atrocious and cruel.
5 In Mr. Campbell's case it was a
6 horrible stabbing incident involving a
7 man and his daughter, and the court
8 went on to find that -- the finding
9 that the lower court made as far as the
10 killing was particularly heinous,
11 atrocious and cruel was proper in that
12 Billy, the man, was stabbed 23 times
13 over the course of several minutes and
14 had defensive wounds, all of those
15 suggesting that Billy was recognizing
16 his fate, the same as in the Hargrave
17 case, that Billy was suffering and that
18 Billy took a long time to contemplate
19 his faith.
20 THE COURT: Don't you think
21 there's an argument -- I'm not ruling
22 on the merits of it, but isn't there an
23 argument in this case where the victim
24 is telling his girlfriend to get away,
25 get away after he's been bound and on

1 his knees on the ground? I know
2 there's some cases that deal with prior
3 restraints as being something to be
4 considered in determining whether this
5 aggravating circumstance exists.
6 MR. PARKER: Your Honor, I
7 would -- first of all, I don't remember
8 the evidence that my client was -- that
9 the victim was ever on his knees. It's
10 my recollection of the testimony that
11 at gunfire was initiated by Mr. Flynn.
12 THE COURT: Well, it isn't really
13 important whether he's on his knees.
14 He was bound and told to get on his
15 knees, and isn't it the mental process
16 that is going on with the victim?
17 MR. PARKER: He was told to get on
18 his knees at Holder Park, your Honor.
19 He was bound in such a manner as to
20 afford him an opportunity to move. In
21 other words, the binding allowed him
22 certain movement that routinely he
23 wouldn't have had if he was bound in a
24 more secure fashion. He was armed the
25 entire time with a loaded firearm

1 throughout the course of events just
2 shortly after it started.
3 The shooting was instituted by
4 Mr. Flynn. Miss Hallock says there's
5 no question about that. To infer that
6 any shooting would have occurred or
7 anybody would have been killed or
8 anybody would have been hurt, we
9 can't. For all we know, the defendant
10 was taking those people out there to
11 let them go because there was a deputy
12 over at Holder Park.
13 The State has to prove that
14 aggravating circumstance beyond a
15 reasonable doubt. That's the standard,
16 and under those facts and particularly
17 in light of the fact, Judge, that it
18 was more reasonable to believe that a
19 person who was committing a heinous,
20 atrocious and cruel act now that he was
21 alone with a surviving witness, instead
22 of walking away leaving that witness
23 alive to testify against him down the
24 line, would have eliminated him. That
25 would have been the circumstance that

1 this court should focus on as far as
2 heinous, atrocious and cruel, but it
3 didn't happen that way. In fact, the
4 court can believe and the evidence will
5 show that it was a fluke that Mr. Flynn
6 was ever shot in the first place, and
7 it he took a long time to die. In
8 fact, even at the very end he was
9 coherent. He was vociferous. He was
10 apparently alert enough to speak with a
11 deputy who was questioning him at the
12 time.
13 The State is going to argue, well,
14 Judge, those are the same facts that go
15 to heinous, atrocious and cruel because
16 he laid there. He lived and he knew
17 what was going to happen. I don't
18 think we can infer that particularly in
19 light of the fact the doctor said this
20 person could have lived with proper
21 medical treatment and immediate medical
22 treatment. It's not the case we want
23 to label heinous, atrocious and cruel
24 because it doesn't reach that
25 heightened level of cruelty. It's just

1 not there. It's a person that
2 responded in a stressful situation.
3 And it's my jury argument, of
4 course, but, you know, the instinct for
5 self-preservation when somebody is
6 shooting at you notwithstanding the
7 circumstances you place yourself in but
8 that instinct is overriding, and there
9 was a brief exchange of gunfire and the
10 defendant left. The defendant left a
11 person who was alive there to testify
12 against him. Under those circumstances
13 I don't think the State has met their
14 burden of beyond a reasonable doubt as
15 far as heinous, atrocious and cruel.
16 THE COURT: Mr. White.
17 MR. WHITE: Your Honor, there are
18 numerous cases that deal with
19 situations that are somewhat similar to
20 this. My starting point really in this
21 regard would be the case of Magill v.
22 State at 428 So.2d 649.
23 MR. PARKER: 649?
24 MR. WHITE: Yes.
25 What that case essentially does is

1 discusses the factor of heinous,
2 atrocious and cruel in a situation
3 where the victim was robbed, and the
4 defendant then raped her and eventually
5 murdered her, and the court there
6 considered that there was a great deal
7 of anguish and fear that she suffered
8 prior to her actually being shot, and
9 it was a case that was similar to
10 this. It's a single gunshot that
11 caused the death, but she had been put
12 through being raped and taken to a
13 remote area and the natural fear that
14 comes from those circumstances.
15 I have a number of other cases,
16 and I'm sure that we may need to
17 address all of them before this court
18 makes its final decision, but at this
19 point, of course, the court's
20 consideration is whether there's
21 sufficient evidence that the jury
22 should be allowed to consider this
23 particular aggravating circumstance.
24 Let me give you the other cites
25 just for the record, but there is

1 Preston v. State at 444 So.2d 939, and
2 here the Florida Supreme Court
3 considered a case where the death
4 occurred nearly instantaneously which
5 is different from ours. This young man
6 suffered for a long time, and we have
7 that additional fact to consider. The
8 victim had been robbed at a store and
9 had been forced by the defendant to
10 accompany him on a mile-and-a-half
11 drive -- here we a three-mile drive --
12 where she was apparently stripped and
13 eventually was killed by cutting her
14 throat. The court stated, "This court
15 has upheld the application of this
16 factor where victims were killed
17 instantaneously or nearly
18 instantaneously when before the death
19 occurred the victims were subjected to
20 agony over the prospect that death was
21 soon to occur."
22 In this case, as this court
23 pointed out, this young man's agony
24 began at the scene at Holder Park when
25 an unknown black man came out of the

1 darkness with a gun, and the first
2 words out of his mouth were, "Wait a
3 minute, man. Put it down," words to
4 that effect, which Kim Hallock
5 testified his speech at that time was
6 very nervous. The next thing that
7 happened to him was he was forced to
8 his knees with his back to the man, and
9 you may remember the testimony that he
10 was complaining you're stepping on my
11 feet. Here's the defendant behind him
12 while he's on his knees. He has no way
13 of knowing what is going to occur. I
14 think it is more than a mere inference
15 that he was greatly concerned about his
16 safety and that of Kim's during that
17 period of time. He's then bound. The
18 gun goes off. There's no doubt in his
19 mind now it's a real gun with real
20 bullets, and I think his anxiety is
21 extenuated at that point. He literally
22 begs that he let Kim go, you know, take
23 my truck, you can take me and let Kim
24 go. The defendant, no, you're not
25 going to do that. He takes them both,

1 and I think at that point in time
2 the --
3 THE COURT: Let me go ahead and
4 interrupt this argument because I think
5 that there's enough to give the
6 instruction. It may be that I have to
7 look at it closer at a later time, and
8 my reason for saying that is that my
9 primary concern in determining whether
10 there's enough to give this instruction
11 was whether there arguably is enough
12 evidence there to show that the victim
13 suffered with the understanding that he
14 was going to be killed or his
15 girlfriend was going to be killed. I
16 think there's enough there by the
17 comments that the victim made, by the
18 fact that he was bound, by the fact
19 that he was placed on the ground at
20 gunpoint or ordered to the ground.
21 (Whereupon, a discussion was had
22 off the record.)
23 MR. WHITE: Sorry for the
24 interruption.
25 THE COURT: But those facts plus

1 the fact that he was then ordered to
2 remain down so he couldn't see where he
3 was going and then taken to another
4 secluded area is enough to give the
5 jury the opportunity to consider that
6 aggravating circumstance.
7 MR. PARKER: I'm just pointing out
8 to the court that Mr. Flynn was, in
9 fact, armed with a firearm virtually
10 throughout the entire time.
11 THE COURT: Once he was back in
12 the truck, yeah, but his hands were
13 behind his back. I understand the
14 argument.
15 MR. PARKER: He indicated to Miss
16 Hallock to move forward so he could get
17 a clear shot at this particular
18 person.
19 What I'm talking about, Judge, is
20 whether or not the feelings of this
21 apprehension in fear is -- certainly it
22 was an anxious moment but whether it
23 reaches that particular level that I
24 think is necessary to instruct the
25 jury.

1 In the case that Mr. White cites
2 this person was absolutely helpless to
3 save her life, and in the methodical
4 way the person was killed suggests
5 heinous, atrocious and cruel. The
6 slashing of a woman's throat, Judge, is
7 certainly different from the
8 circumstances that exist in this case
9 where there's a return of gunfire, and
10 the evidence suggests it was an errand
11 bullet that struck Mr. Flynn.
12 THE COURT: Did you have any other
13 arguments? You're arguing it's a
14 doubling if I consider two and four
15 together, right?
16 MR. PARKER: Yes, sir.
17 THE COURT: And --
18 MR. WHITE: I have case laws to
19 that. I need to address it at the
20 appropriate time, your Honor.
21 MR. PARKER: I would argue that
22 the previous felony involving violence
23 because it was youthful offender status
24 should not be considered in this
25 circumstance. However, I make that

1 argument knowing full well that the
2 Campbell case says that there is no
3 reason why you can't consider a
4 juvenile conviction for a violent crime
5 as an aggravating circumstance.
6 THE COURT: Well, that objection
7 is overruled, but I'm still interested
8 in the doubling argument.
9 I had some notes I made earlier.
10 The argument you're making is
11 similar to the one in 374 954 which is
12 Flinnery v. State regarding the
13 grabbing of a gun or shooting of a gun,
14 Mr. Parker, but that was that factor by
15 itself. It wasn't with all these other
16 things.
17 Okay. Mr. White, why don't you
18 address the doubling argument that he
19 has with regard to --
20 MR. WHITE: Thank you, your Honor.
21 He has a valid point to some
22 extent. I think that the difficulty
23 that you have in upholding his
24 objection here is that the way that the
25 crime is charged includes not only the

1 felony of robbery as an underlying
2 felony, but also that kidnapping
3 furthermore alleges not just the
4 kidnapping was done in order to effect
5 a robbery but also that it was done in
6 order to terrorize --
7 I forget all the exact language
8 here. What does it say?
9 -- terrorize or inflict bodily
10 harm. I think that when we get to that
11 language and we look at the facts of
12 this case, it becomes apparent that he
13 had completed his robbery at Holder
14 Park and the kidnapping in this case.
15 If you look at all of the facts, he did
16 very little more than terrorize.
17 We haven't made this argument to
18 the jury during the penalty phase -- or
19 during the guilt phase. I don't think
20 it was necessary to do so, but when you
21 look at what was occurring and how he
22 took the two of them to that remote
23 citrus grove, it really wasn't in
24 furtherance of so much of a robbery at
25 that point as it seemed to be for

1 another purpose which was either to
2 terrorize them or possibly kill them or
3 to possibly rape Kim, and the rape of
4 Kim becomes a foremost thing in your
5 mind when you consider his statement to
6 her right after she tried to run in a
7 citrus grove where he said, "You're
8 nothing but a slut and you'll do what I
9 tell you or I'll blow your brains
10 out." That was a pretty good
11 indication he had something in mind for
12 her and he was going to make her do
13 something.
14 Our point is that the law is
15 abundant, and I'll give the court these
16 citations that where there's felonies
17 that underlie the felony murder which
18 felonies do not involve solely the
19 motive of pecuniary gain, that it is
20 not improper for the court to allow the
21 commission of the felony of the murder
22 during one of the enumerated felonies
23 to be considered and the financial gain
24 to be considered.
25 The first of those is Johnson v.

1 State at 438 So.2d 774 where the
2 defendant was convicted of three counts
3 of first-degree murder, two counts of
4 robbery, kidnapping, arson and two
5 counts of attempted first-degree
6 murder, and in that case the court held
7 that the pecuniary gain factor was
8 properly found based on the fact that
9 there were three underlying felonies
10 including the additional factors of
11 arson and kidnapping.
12 Lightbourne v. State at 438 So.2d
13 380, in that case the finding of both
14 these factors were upheld where the
15 defendant committed a rape and a
16 robbery in conjunction with the
17 murder. The Florida Supreme Court said
18 it was not improper because in addition
19 to the robbery which had the pecuniary
20 motive there was also the underlying
21 felony of rape.
22 Bates v. State at 465 So.2d 490
23 the defendant there was convicted of
24 first-degree murder, kidnapping and
25 attempted sexual battery and armed

1 robbery. The court found that it was
2 not an improper doubling because the
3 murder was committed not only during a
4 robbery but also during the course of
5 the kidnapping and the attempted sexual
6 battery.
7 In Brown v. State, 473 So.2d 1260,
8 the Florida Supreme Court again
9 considered this issue, and there the
10 defendant had been convicted of murder
11 and burglary with an assault, and the
12 court had found both aggravating
13 factors at the trial level. The
14 Florida Supreme Court found it was not
15 improper because the burglary had a
16 much broader significance than simply
17 being the vehicle for a theft. The
18 victim had also been beaten, raped and
19 strangled.
20 Thompson v. State which is at 553
21 So.2d 153, a 1989 case, involved a
22 situation where the defendant had
23 kidnapped the victim because the victim
24 had apparently stolen some $600,000
25 from him, and the implications are

1 pretty broad that they were involved in
2 some sort of underworld-type activity
3 preceding this. He and two accomplices
4 kidnapped him and took him out to sea
5 where they tortured him by beating him
6 and wrapped him in chains, shot him in
7 the head and dumped him in the ocean.
8 There both of these aggravating factors
9 were found, and the court noted that
10 the murder was committed while engaged
11 in the felony of kidnapping and was
12 also committed for pecuniary gain. He
13 was tortured in order to obtain
14 information about where the $600,000
15 was, but it was not improper to
16 consider both because kidnapping was
17 motivated in part by revenge. He
18 wanted revenge on this man. Not only
19 did he want his money but he wanted to
20 let him know he was not going to do
21 this to him and it go unpunished.
22 In Cherry v. State, 544 So.2d
23 1841, the court considered a situation
24 where both of these aggravating factors
25 were found, and it was a felony murder

1 involving a burglary as the underlying
2 felony; and the court there, while it
3 found in that particular case that it
4 was improper, it clearly recognized
5 again the possibility that both factors
6 can be properly considered where the
7 felony was committed for other reasons
8 besides pecuniary gain which is our
9 argument as to the kidnapping.
10 Finally, there's a case of Bryan
11 v. Case at 533 744, and that case is
12 interesting because in that case the
13 victim was kidnapped from Mississippi.
14 He was robbed of his wallet and his
15 keys. His car was then used as the
16 getaway vehicle because the defendant
17 and his accomplice were without any
18 transportation. They drove him to
19 Florida and killed him in the
20 Panhandle. Eventually they spent the
21 night in the motel. The next day they
22 drove him out into a remote area where
23 they killed him. The court there
24 indicated that it was clearly proper
25 for the trial court to have considered

1 both of these aggravating factors
2 because in addition to the robbery
3 there was also the additional factor
4 that he was kidnapped and removed from
5 one state to another.
6 So it is our position that for the
7 court to allow both of those factors to
8 be considered or to find both of them
9 to exist, at a later time it would not
10 be an improper doubling where we have,
11 not only a robbery, but once that
12 robbery had pretty much been effected,
13 the defendant then decided to kidnap
14 both of these young people and took
15 them to another remote area, and the
16 evidence would seem to clearly indicate
17 that there was -- if
18 robbery -- escape from the robbery or
19 flight after the robbery was a part of
20 it. There also was the additional
21 factor that he wanted to or intended to
22 either terrorize or inflict bodily harm
23 to them.
24 THE COURT: Do you have any
25 rebuttal to that?

1 MR. PARKER: Only, your Honor,
2 that it's clear by the evidence that
3 because the deputy was in the area of
4 Holder Park that he removed the victims
5 to the grove. That is all part of one
6 transaction which is the robbery, the
7 attempt to move from that particular
8 area, and actually there's no evidence
9 separate and apart from that that
10 suggests that he was doing anything to
11 terrorize or to sexually assault or --
12 that's something that the State wants
13 the jury to conclude based on some
14 words that Miss Hallock has testified
15 she's unsure about, as a matter of
16 fact.
17 THE COURT: Well, in the case of
18 Provence v. State there's some pretty
19 clear language, I think, that would
20 indicate that you're allowed to
21 consider this aggravating circumstance
22 as long as there's some other felony
23 than the robbery. In other words, you
24 consider both if one is for pecuniary
25 gain and the other isn't, for example,

1 kidnapping which is the underlying
2 felony in that case, and I think at
3 least arguably to go to the jury in
4 this case that it's appropriate so I
5 will allow that instruction to be
6 given.
7 We'll have to work on it a little
8 bit later, Mr. Parker, but I don't
9 understand how it could not be a
10 kidnapping. Number one, he's been
11 convicted of a kidnapping. Number
12 two --
13 MR. PARKER: I don't have a
14 problem with that, Judge. It's a
15 kidnapping for the purpose of a
16 robbery.
17 THE COURT: I don't understand
18 that.
19 MR. PARKER: The way it's
20 charged. That's what they charge in
21 their robbery charge. That's what they
22 charge. It was an ongoing offense.
23 The removal of the victims from Holder
24 Park was, I think the evidence shows,
25 to keep from being in the area where

1 the deputy was.
2 THE COURT: You're not limited to
3 what's charged.
4 MR. PARKER: I'm just letting the
5 court know what my argument is.
6 THE COURT: I know. I'm trying to
7 explain my reasoning for -- we'll have
8 to hash it out later maybe, but it
9 seems to me these cases are saying
10 that.
11 Are there any other arguments to
12 these four?
13 MR. WHITE: I think we covered
14 them all.
15 THE COURT: You can make another
16 doubling argument with regard to No. 1
17 I think, but it's the same. It's the
18 same.
19 MR. PARKER: Same reasoning I
20 think.
21 THE COURT: Okay. I think there's
22 enough for all four of those then.
23 Let's move on to mitigating.
24 MR. PARKER: Judge, we would
25 request one statutory mitigating factor

1 which I believe is applicable, and that
2 is the defendant acted under extreme
3 duress or under the substantial
4 domination of another person.
5 I would cite the court to Toole v.
6 State, 479 731, and the definition of
7 duress as used in the statutory factor
8 mitigating against death sentence. The
9 court goes on to define that duress is
10 not some internal function but that it
11 refers to external provocation such as
12 imprisonment or the use of force or
13 threats, and I would ask under the
14 circumstances the initiation of the
15 shooting by Mr. Flynn and the
16 self-preservation instinct that all of
17 us have that the duress of the shooting
18 should be applicable under these
19 circumstances.
20 THE COURT: Well, Mr. White, what
21 do you say about that?
22 MR. WHITE: Judge, I haven't been
23 able to find any case law that would
24 shed a whole lot of light on this
25 issue. To me it seems to be a bit of a

1 conundrum to say that this duress could
2 be duress applied by a victim who has
3 been put in a position where he feels
4 he has to use deadly force himself to
5 resist what the defendant is doing. It
6 would seem logic could only require
7 that what we're talking about is a
8 situation where the defendant was put
9 up to the criminal episode as a result
10 of duress by someone like a codefendant
11 or an accomplice or some other bad
12 guy.
13 However, I don't really have any
14 objection. If he wants to argue that
15 to the jury, I don't have any
16 objection. You can give it to them,
17 and I'll be glad to have them consider
18 that.
19 MR. PARKER: One is better than
20 none, Judge.
21 THE COURT: Okay.
22 MR. PARKER: I would also argue
23 that certainly I be allowed to talk
24 about any other mitigating factor which
25 I feel the evidence shows any other

1 aspect of the defendant's character or
2 record or any other circumstances of
3 the offense. However, they're not
4 specifically categorized as statutory
5 mitigation. I have no others that I
6 see would apply.
7 THE COURT: You're asking for that
8 one statutory circumstance?
9 MR. PARKER: That's correct.
10 THE COURT: Of course, you're
11 entitled to argue whatever you want
12 beyond that.
13 MR. PARKER: Yes.
14 THE COURT: When we started, this
15 table was pretty neat. I'm trashing
16 it, aren't I?
17 MR. WHITE: I was going to say I
18 haven't touched it, Judge.
19 THE COURT: Okay. The
20 introduction.
21 Do you all have in here that their
22 advisory verdict is going to be given
23 great weight?
24 MR. PARKER: I'm sorry, Judge.
25 THE COURT: Do you have anything

1 in here that tells them their advisory
2 verdict is going to be given great
3 weight by the court?
4 MR. WHITE: Mine are the standard
5 instructions which, you know, I don't
6 know that they include anything of that
7 nature. Let me look and see.
8 No.
9 My secretary says, "No," and
10 looking through it --
11 THE COURT: Is that why she's
12 here?
13 MR. WHITE: Yes, sir.
14 In looking through it myself, I
15 didn't see any either.
16 MR. PARKER: I don't see any
17 either, Judge. I basically tracked the
18 standards. However, the case law is
19 clear and basically requires you to
20 give great weight to the jury
21 recommendation. Certainly I would
22 request that added instruction.
23 How about somewhere right there at
24 the end?
25 MR. WHITE: I was thinking on the

1 portion where it says, "The fact that
2 the determination of whether you
3 recommend a sentence of death or a
4 sentence to life imprisonment in this
5 case can be reached by a single ballot
6 should not influence you to act hastily
7 or without due regard to the gravity of
8 these proceedings," and then it goes
9 on, "Before your ballot you should
10 consider the evidence." It seems like
11 right after that might be a good
12 place.
13 THE COURT: Well, there's another
14 place. Are you talking about at the
15 end of it?
16 MR. WHITE: Well, no. It's not
17 quite the end. It's about the sixth or
18 seventh paragraph from the end. You
19 know where it gives the examples of
20 what the verdict forms would be like.
21 The paragraph before that is the one I
22 was looking at.
23 THE COURT: Well, look at the
24 introduction. You all have the same
25 introduction.

1 MR. WHITE: The first paragraph?
2 THE COURT: Yes.
3 "As you've been told, the final
4 decision as to what punishment shall be
5 imposed is the responsibility of the
6 judge. However, your advisory verdict
7 will be given great weight by the
8 court, and it is your duty to follow
9 the law that will now be given to
10 you."
11 MR. WHITE: I don't have an
12 objection to that either.
13 MR. PARKER: No objection.
14 MR. WHITE: Where would you put
15 that here?
16 THE COURT: "As you've been told,
17 the final decision as to what
18 punishment shall be imposed is the
19 responsibility of the judge. However,
20 your advisory verdict will be given
21 great weight by the court, and it is
22 your duty to follow the law," et
23 cetera, just follow that sentence on.
24 MR. WHITE: You want to say
25 "weight by the court and it is your

1 duty"?

2 THE COURT: Yes. Just continue on

3 with that.

4 I don't have the instructions

5 where I've done that before, but I have

6 been hearing argument on it. I came to

7 the conclusion that since that is the

8 law, the jury should be advised because

9 I don't want them to take what they're

10 doing lightly.

11 MR. WHITE: I don't have any

12 objection to it on behalf of the

13 State.

14 MR. PARKER: Judge, I have kind of

15 a last-minute request for a special --

16 I've read the standard. In looking at

17 Hargrave v. State, which is a Florida

18 Supreme Court case, my concern is

19 there's going to be -- there's a

20 potential based on the instructions for

21 just a tabulation. There's more

22 aggravation than mitigation, and I

23 don't think that's what you're asking

24 the jury to do, and that's not what the

25 law is. It's not a mere tabulation.

1 It's a weighing of those circumstances
2 and I think --
3 THE COURT: 283. I don't remember
4 the page. Mr. White and I went over
5 that ground one time or two times.
6 It's not -- they use the term "score
7 card," but it's not a score card.
8 MR. PARKER: I just want to
9 make -- they use the words "outweigh
10 any aggravating circumstances" and
11 things of that nature, but, you know, I
12 don't recall any instructions --
13 THE COURT: Well, I switched the
14 old instructions now. I've got it
15 reversed. We don't say that the
16 mitigating circumstances have to
17 outweigh the aggravating
18 circumstances. We say clearly that --
19 there was a change we made sometime
20 ago -- that aggravating circumstances
21 have to outweigh mitigating
22 circumstances.
23 Is that what you're talking
24 about?
25 MR. PARKER: No. Basically when

1 you're talking about outweighing, I
2 want this instruction to be clear that
3 it's not, hey, we got four to one;
4 therefore, it outweighs by numerical
5 value.
6 THE COURT: Do you have some
7 proposed language?
8 MR. PARKER: That the death
9 sentence statute does not comprehend
10 mere tabulation of aggravating versus
11 mitigating circumstances to arrive at a
12 net sum that requires weighing of those
13 circumstances. I'm citing you the
14 Hargrave v. State, 1979.
15 THE COURT: Any problem with
16 that?
17 MR. WILLIAMS: Is that language
18 out of the headnote or is that out of
19 the body of the case?
20 MR. PARKER: Well, I'm reading it
21 out of the headnote. Let's see what
22 the body says.
23 State v. Dixon teaches us the
24 statute does not comprehend the mere
25 tabulation of aggravating circumstances

1 versus mitigating circumstances to
2 arrive at a net sum. It requires a
3 weighing of those circumstances.
4 MR. WHITE: There's a place here
5 on Page 3 of the instructions that we
6 prepared where it says, "The sentence
7 that you recommend to the court must be
8 based upon the facts as you find them
9 from the evidence and the law." It
10 goes on to say, "You should weigh the
11 aggravating circumstances against the
12 mitigating circumstances and your
13 advisory sentence must be based on
14 those considerations."
15 Perhaps we can start that last
16 sentence with that admonishment that
17 you should not merely total the number
18 of aggravating factors versus the total
19 number of mitigating but should weigh
20 the aggravating circumstances or some
21 language.
22 THE COURT: Do you have any
23 problem with the language from the
24 case, either the headnote or the case?
25 MR. WHITE: That's fine.

1 Let's see.
2 It could read the death
3 sentence -- no. We don't really want
4 to -- the basic language I don't have a
5 problem with, but how to exactly put it
6 in here I'm not quite sure of.
7 MR. PARKER: Your decision should
8 not be based on mere tabulation.
9 THE COURT: That sounds good.
10 MR. PARKER: I don't have a
11 problem with the word "decision."
12 MR. WHITE: That's fine.
13 Your decision should not be a mere
14 tabulation of the number of aggravating
15 circumstances versus mitigating
16 circumstances.
17 Now, the question is: Where do we
18 put that? Should it read like this in
19 that paragraph: Mitigating
20 circumstances --
21 No. I'm sorry.
22 "The sentence that you recommend
23 to the court must be based upon the
24 facts as you find them from the
25 evidence and the law."

1 We could say then that, "Your
2 decision should not be a mere
3 tabulation of the number of aggravating
4 circumstances versus mitigating
5 circumstances. You should weigh the
6 aggravating circumstances against the
7 mitigating circumstances, and your
8 advisory sentence must be based on
9 those considerations."
10 Does that read okay?
11 MR. PARKER: That's fine.
12 THE COURT: Sounds good.
13 I'm making all these notes.
14 My secretary is here because she
15 brought the computer disk with these
16 instructions so that if we needed to
17 make changes we could. Would the court
18 be apprehending that you want us to
19 make the changes that we talk about and
20 submit after lunch an amended copy of
21 these?
22 THE COURT: Yes. Did you include
23 in yours the mitigating circumstance?
24 MR. WHITE: No. We will need to
25 add that in an appropriate place here.

1 THE COURT: If we do that,
2 Mr. Parker, are we missing anything
3 that you want? Is there anything you
4 want other than what we talked about?
5 MR. PARKER: No, sir.
6 MR. WHITE: Mine would say -- the
7 way mine addresses the mitigating
8 was --
9 Let's see.
10 It says, "Among the mitigating
11 circumstances you may consider if
12 established by the evidence are any
13 aspect of the defendant's character or
14 record in any other circumstance of the
15 offense." So we want to add to that
16 the duress.
17 THE COURT: Put it just ahead of
18 that, first the statutory and then the
19 nonstatutory.
20 MR. PARKER: The only other thing,
21 Judge, I submitted a definition of
22 duress to coincide with the statutory
23 mitigating. The statutory language
24 reads: "The defendant acted under
25 extreme duress or under the substantial

1 domination of another person," and then
2 pursuant to Toole v. State, 479 at 731,
3 I'd ask that the court reads the
4 definition of duress: "Duress as used
5 herein refers to external provocation
6 such as imprisonment or the use of
7 force or threats."
8 MR. WILLIAMS: We can plug that
9 in.
10 MR. WHITE: Is that in your
11 instruction?
12 MR. PARKER: Yes.
13 MR. WILLIAMS: In the package you
14 gave us, right?
15 MR. PARKER: That's correct.
16 MR. WILLIAMS: Somewhere in there
17 is the definition you want in this
18 instruction?
19 MR. WHITE: If I can find it.
20 Duress. So we want to put --
21 that's not the total instruction on
22 duress, though.
23 MR. PARKER: There's another
24 instruction that talks about --
25 MR. WHITE: Did you do the

1 instruction, the regular mitigating
2 instruction, for duress?
3 MR. PARKER: Well, I thought that
4 was it.
5 I got the statute here.
6 MR. WHITE: Your Honor, do you
7 have your standard instruction?
8 THE COURT: Yes.
9 MR. WHITE: What does it say with
10 regard to the mitigator acting under
11 duress?
12 MR. PARKER: Here's the statutory
13 language right at the bottom.
14 THE COURT: I don't have that in
15 mine.
16 MR. WHITE: Yours doesn't have
17 the --
18 THE COURT: Hold on just a second.
19 On which one?
20 MR. WHITE: On duress, the
21 defendant acted under extreme duress.
22 It would be "e" under the statute. I
23 don't know what it would be there.
24 THE COURT: Well, mine is so old
25 they didn't even have that many

1 mitigating circumstances.

2 MR. WHITE: It can't be that old.

3 THE COURT: No, I don't have it.

4 You say "e"?

5 I have no prior history, emotional

6 disturbance, appreciate the criminality

7 of his conduct, the age of the

8 defendant and any other aspect of his

9 character.

10 Isn't that awful?

11 The statute says the defendant

12 acted under extreme duress or under the

13 substantial demeanor or domination of

14 another person. You just want to add

15 the language out of --

16 MR. PARKER: -- out of Toole v.

17 State.

18 MR. WHITE: If you want to give

19 that to me, we'll give her the package

20 to work from.

21 THE COURT: Anything else?

22 MR. WHITE: I don't believe so.

23 THE COURT: You guys can go to

24 lunch today.

25 You can't. Sorry.

1 MR. WHITE: That's why she came
2 down here. She wanted to go to
3 Bennigan's.
4 MR. WILLIAMS: Bennigan's is open
5 past 5:00.
6 (Whereupon, court was recessed for
7 lunch at 11:45 A.M. and was reconvened
8 at 1:00 P.M.)
9 (Whereupon, the following
10 proceedings were had outside the
11 presence and hearing of the jury:)
12 THE BAILIFF: Remain seated and
13 come to order. This court is back in
14 session.
15 THE COURT: The defendant is
16 present, and the attorneys are present.
17 How long do you think you'll be
18 arguing?
19 MR. WHITE: Judge --
20 THE COURT: I'm not trying to hold
21 you to a time.
22 MR. WHITE: -- I will try to give
23 you a guess, and I would guess a half
24 hour or less for me.
25 THE COURT: How about you,

1 Mr. Parker?
2 MR. PARKER: I agree. That sounds
3 about right.
4 THE COURT: I'm not going to give
5 them a very formal instruction on
6 closing argument. I'm going to say
7 something like please pay attention to
8 the attorneys' final arguments
9 regarding this phase of the trial.
10 Please return the jury.
11 (Whereupon, the following
12 proceedings were had in the presence
13 and hearing of the jury:)
14 THE COURT: Please be seated,
15 ladies and gentlemen.
16 Ladies and gentlemen, please pay
17 close attention to the final arguments
18 of counsel regarding this phase of the
19 proceedings.
20 Mr. White.
21 MR. WHITE: Thank you, your Honor.
22 Good afternoon, ladies and
23 gentlemen. At this point in the trial
24 each side will have one opportunity to
25 address you, and this will be my

1 opportunity on behalf of the State of
2 Florida. What we need to consider at
3 this time obviously is now the issue of
4 penalty, and there are some laws that
5 will give you a great deal of guidance
6 in that regard as to what your
7 recommendation should be to the court.
8 What I need to do now is to argue
9 to you what evidence has been
10 introduced both during the trial,
11 during the guilt phase, and that we
12 introduced this morning that you can
13 consider and argue to you why it's
14 important. Why is it significant?
15 There are certain aggravating
16 circumstances which are allowed to be
17 considered by a jury, and they are set
18 out by a statute. We have met with the
19 judge, and we've discussed those, and
20 there's been a determination made that
21 you should be allowed to consider four
22 possible aggravating circumstances in
23 this case, and I'm going to discuss all
24 those with you in just a moment.
25 The State's burden here is kind of

1 similar in a sense to the guilt phase.
2 There we had to prove guilt beyond a
3 reasonable doubt. We use that same
4 standard now, and the State now has to
5 prove each of the aggravating
6 circumstances beyond a reasonable
7 doubt. If we do that as to a
8 particular aggravating circumstance,
9 then at that point you can consider
10 it. If we don't prove it beyond a
11 reasonable doubt, then you shouldn't
12 consider it.
13 Once you have determined whether
14 there are some aggravating
15 circumstances that have been proven,
16 then you will be asked to consider
17 whatever mitigation the defense has
18 offered. They called witnesses, and
19 they can rely on that testimony and can
20 offer what was said as mitigation to
21 you, and then you would consider
22 whether the aggravating circumstances,
23 or circumstance, outweighs whatever
24 mitigation you may find exists in this
25 case.

1 Now, although we will offer four
2 aggravating circumstances here, I will
3 submit to you that if you find that any
4 one of them has been proven beyond a
5 reasonable doubt, you then would
6 consider whether that one aggravating
7 circumstance is sufficient that it
8 outweighs any mitigation that
9 Mr. Parker can offer to you; and if it
10 does outweigh that mitigation, that one
11 aggravating circumstance in and of
12 itself could be sufficient for you to
13 return an advisory verdict recommending
14 the death penalty. All of you have
15 indicated that you could fairly
16 consider the death penalty and that you
17 could, in fact, return an advisory
18 verdict in that regard.
19 With that all in mind kind of as a
20 background let's talk about what the
21 aggravating circumstances are that our
22 legislature has decided that should
23 properly be considered by a jury as
24 perhaps calling for the death penalty
25 in the appropriate case.

1 The first one that I'd ask you to
2 consider is whether we have shown that
3 the defendant has previously been
4 convicted of a felony involving the use
5 or threat of use of violence, and here
6 in this case obviously this morning I'm
7 sure all of you realized that the
8 testimony about the robbery in New York
9 was in order to satisfy that
10 requirement; and we submit to you that
11 it is extremely significant that that
12 early in his life this defendant had,
13 in fact, already committed a robbery in
14 New York for which he was convicted and
15 sentenced to prison as a youthful
16 offender; but in addition to that you
17 have the right to consider that in this
18 case we're not just talking about a
19 murder of Chip Flynn, and we're not
20 just talking about crimes committed
21 against Chip Flynn.
22 You are also able to consider --
23 and I submit you really should
24 consider -- that he also made a victim
25 of Kim Hallock. He robbed her, and he

1 kidnapped her at gunpoint. Using a
2 deadly weapon he forced her to submit
3 to him and took her away from the place
4 where she was in the beginning safe
5 with her boyfriend to a place that we
6 know she did not want to go; and he did
7 that to her certainly by the use or
8 threat of the use of violence, and it
9 is only right that you consider that
10 those crimes also have been committed
11 by this defendant.
12 Now, the language may be somewhat
13 confusing because it says the defendant
14 has previously been convicted of a
15 felony, but we are talking about
16 previous convictions previous to the
17 time that he is actually sentenced by
18 this judge which isn't going to be
19 today. It's going to be sometime
20 later, and you already returned your
21 verdict, and the judge has already
22 adjudicated the defendant guilty as to
23 that robbery and as to that kidnapping
24 and he is, in fact, convicted of those
25 charges. It is previous to the

1 sentence that he will receive on this
2 murder.
3 We'd ask that you consider,
4 secondly, whether or not this murder
5 was committed in a manner that was
6 heinous, atrocious or cruel, and the
7 judge is going to instruct you as to
8 what those things mean, and he is going
9 to tell you that the crime, the murder,
10 must be especially heinous, atrocious
11 and cruel; and heinous means extremely
12 wicked or shockingly evil. Atrocious
13 means outrageously wicked and vile.
14 Cruel means designed to inflict a high
15 degree of pain with utter indifference
16 to or even the enjoyment of the
17 suffering to others. The kind of crime
18 intended to be heinous, atrocious or
19 cruel is one accompanied by additional
20 acts that shows that the crime was
21 consciousless, pitiless and was
22 unnecessarily tortuous to the victim.
23 In this particular case there are
24 several kinds of discrete aspects of
25 what occurred that night that I submit

1 to you justify a finding that this
2 murder was committed in a heinous,
3 atrocious and cruel fashion. You are
4 allowed to consider the fear and the
5 mental anguish that Chip Flynn felt
6 prior to his death, even prior to his
7 shooting, and we divide it up, and I'm
8 going to talk in detail about each, but
9 I submit to you that it's proper for
10 you to consider what fear he may have
11 felt when he was being taken away from
12 Holder Park bound in his car to a
13 remote place and then also to consider
14 the suffering that he must have endured
15 while he lied there in that citrus
16 grove after he had been shot, the
17 physical suffering and the mental
18 suffering.
19 And just to remind you of some of
20 the key elements or facts that I submit
21 to you are important in this
22 consideration, remember, that he was
23 approached while outside of his truck
24 by an unknown black man we now know to
25 be Crosley Alexander Green, but he

1 wasn't known to Chip Flynn. He
2 appeared in front of him suddenly with
3 a gun, and what Kim hears him saying in
4 a nervous voice is, "Hold on a minute,
5 man. Put it down." And that's where
6 Chip Flynn's fear and mental anguish
7 begin. Here is a strange man that has
8 accosted him at gunpoint, but it goes
9 further than that.
10 The defendant then makes him turn
11 around and get down on his knees.
12 Certainly at this point Chip Flynn has
13 got to be in fear of what is coming
14 next, and the thoughts that were in his
15 mind had to be unpleasant ones as to
16 why he was being asked to get down on
17 his knees; and at that point in time
18 fortunately it was only to bind his
19 hands behind him, but Chip Flynn had no
20 way of knowing that until he asked for
21 that shoelace out of the shoe.
22 He was robbed at gunpoint. His
23 girlfriend was robbed, and then at a
24 point before they left, when the
25 defendant told him that he wanted them

1 both in the truck, you may recall that
2 Kim testified that Chip said, "Why
3 don't you let her go. Take me. Take
4 the truck. Why don't you let her go."
5 Chip knew that where they were
6 going, it wasn't going to be good, and
7 he had no way of knowing exactly what
8 was going to happen, but he didn't want
9 Kim to have to be there when it
10 happened, but the defendant put them in
11 the truck. He made Chip and his
12 girlfriend sit there in the truck with
13 their heads down in the dark in the
14 middle of the night and drove them to
15 an area they couldn't see where they
16 were going. They had to endure the
17 time that it took to go there again
18 with the question in their mind, "Why
19 is he doing this? What is he going to
20 do?"
21 They arrive in the citrus grove,
22 and then it's not a question of he's
23 going to pull -- he's going to get them
24 out of the truck and drive off and
25 leave them. No. He pulls Kim out of

1 the truck and tries to keep Chip from
2 getting out of the truck, tries to shut
3 the door on him. Remember Kim's
4 testimony?
5 And then Kim runs and tries to get
6 away, and that's when we hear another
7 statement by the defendant that perhaps
8 keys us as to what's going on here.
9 Because when he finally grabs Kim and
10 pulls her back and she's, I think she
11 said, squatting or kneeling on the
12 ground, he tells her, "You're a slut
13 and you're going to do what I tell you
14 or I'll blow your brains out."
15 Certainly those type of words do
16 nothing to dispel the fear that Chip
17 Flynn must have been harboring all this
18 time.
19 Now, the next thing that occurs I
20 would submit to you probably highlights
21 how fearful he was of what was going to
22 happen because what he did, as you all
23 recall, is with his hands tied behind
24 his back he jumped out of the truck and
25 tried to shoot the defendant. Now,

1 there's no evidence that Chip Flynn was
2 a trick shot artist, and certainly he
3 must have known that his chances in
4 this gunfire were slim if he had any at
5 all; and this was a desperate maneuver
6 on his part, a maneuver that I submit
7 was caused by the extreme fear that he
8 had and conviction that he must have
9 felt, but it was his only option. What
10 else could he do? At that point in
11 time that must have been the thought
12 that was in his mind, and I'll tell you
13 this: There is no question that Chip
14 Flynn didn't think this defendant was
15 just going to let them go. Because if
16 that's what he thought, he would have
17 never come out of that truck with that
18 gun shooting behind his back. Once he
19 does that, he is shot.
20 You heard the testimony of the
21 medical examiner. The bullet
22 penetrated the front wall of his chest
23 through the ribs, struck the right
24 middle lobe of the -- I'm sorry -- the
25 middle lobe of the right lung, the

1 lower lobe of the right lung, struck
2 what he termed, as I recall, a
3 mid-sized pulmonary artery, which all
4 of these injuries would have caused
5 fairly extensive bleeding. It went out
6 the back wall of the chest wall and
7 lodged next to the vertebrae in his
8 back. That was the wound that he then
9 lied there suffering with for some time
10 between 40 minutes and an hour before
11 he eventually died, and again it is
12 proper that you consider and we
13 certainly would ask you to consider his
14 suffering both physically and mentally
15 as he lay there not knowing if perhaps
16 the defendant was going to come back to
17 finish him off. He's lying there in
18 the midst of a dark citrus grove. Chip
19 Flynn just like Kim Hallock --
20 You remember her testimony? When
21 I left there, I didn't know where I was
22 until I got to the first road sign.
23 He had no idea where he was. All
24 he knew was it was dark and he was
25 alone and his hands were behind his

1 back and he was shot and there was a
2 black man there who had just shot him
3 and he didn't know where he was.
4 That's the situation that he endured.
5 By the time the officers got
6 there -- and I believe the time frame
7 until they arrived was 41 minutes, if I
8 recall correctly, before the deputies
9 arrived, and he lived for some time
10 after that as you may recall and
11 eventually expired while Sergeant
12 Clark, one of the first two deputies
13 that first got there, was going back to
14 bring her car around which was when he
15 finally expired. When those two
16 officers first arrived, the only words
17 they could get from this young man
18 was: "Get me out of here. I want to
19 go home."
20 They asked him, "Who did this?
21 Where did he go?"
22 All he could say is: "Get me out
23 of here. I want to go home."
24 I think that that's another good
25 indication of how desperate he felt,

1 what was in his heart at the time. I
2 submit to you it's an indication that
3 he knew he was deathly hurt. He wanted
4 to go back to his home with his parents
5 where he lived.
6 I submit to you that when you
7 consider all of these factors together,
8 that this defendant made the
9 determination that this wasn't just
10 going to be just a robbery nice and
11 simple. He was going to force these
12 people to do other things in addition
13 to this robbery, and he used a gun,
14 forced them to go to a remote area; and
15 it was he that created this situation
16 and that put both of them through --
17 and Chip Flynn most importantly to
18 you -- through the anguish of wondering
19 for quite awhile whether he was going
20 to be killed or what and then, of
21 course, the anguish that followed; and
22 I submit that all of that together
23 does, in fact, prove beyond a
24 reasonable doubt that this murder was
25 heinous, atrocious and cruel.

1 The third aggravating circumstance
2 would be that the crime, the murder,
3 itself was committed while the
4 defendant was engaged in the commission
5 of or attempting to commit or in flight
6 after committing the crimes of robbery
7 or kidnapping, either one; and I submit
8 to you that it's been proven to you
9 that both of those crimes had been
10 committed by the defendant and were
11 still being committed or certainly that
12 at least he was in flight after having
13 completed his robbery, and I would urge
14 you to consider that as an aggravating
15 factor that is certainly worthy of your
16 weighing heavily with regard to the
17 sentence in this case.
18 The legislature has found that
19 there are certain types of murders that
20 occur in which this sort of aggravating
21 circumstance exists. There are
22 basically two types of murder,
23 premeditated murder and then there's
24 this sort of murder, felony murder.
25 Premeditated murders are not all

1 murders that call for the death
2 penalty. Because while a person
3 decided they're going to kill somebody,
4 they may have done so on just a brief
5 reaction and made that decision; and
6 that sort of premeditation is not the
7 sort that the legislature finds
8 reprehensible, but to kill somebody in
9 the midst of one of these sorts of
10 crimes has been determined to be
11 reprehensible and something that should
12 call for consideration of the death
13 penalty.
14 In this case you have to consider
15 this was not just a simple commission
16 of a murder during a robbery that
17 arrived when at a convenience store.
18 This was -- number one, two victims
19 were submitted to these crimes. Both
20 Kim and Chip were victims that day of
21 his actions, and they were victims not
22 just of a robbery but also this
23 kidnapping which I submit to a large
24 degree gives this crime its
25 reprehensible nature because it wasn't

1 sufficient that he just rob them. He
2 had to commit this other act and cause
3 this other anguish on their part by
4 taking them further to a remote area in
5 a citrus grove. Again, we would ask
6 that you find and certainly I submit to
7 you that the record is without a doubt
8 that that particular aggravating
9 circumstance does exist.
10 The final aggravating circumstance
11 we would ask you to consider is this:
12 That the crime for which the defendant
13 is to be sentenced was committed for
14 financial gain. The crime is felony
15 murder. Felony murder requires that he
16 murder someone, kill someone, during
17 the course of a felony. Here the
18 felony -- one of the felonies is
19 robbery. What could be worse than to
20 murder someone, to kill someone, over
21 money? Just over money? The
22 legislature has determined that that is
23 reprehensible and that is, in fact,
24 something that a jury should consider.
25 Now, Mr. Parker may argue to

1 you -- and I apologize if I'm wrong
2 about this and I waste your time
3 talking about something that he doesn't
4 talk about, but I would think that he
5 might try to argue to you that, well,
6 it's really not fair for you to
7 consider he committed it during the
8 course of a felony of robbery as the
9 third aggravating circumstance and then
10 turn around and consider that it was
11 for pecuniary gain.
12 It is fair in this case, and it's
13 fair because he committed this murder
14 not just during the felony of robbery
15 but also during the felony of
16 kidnapping, and that kidnapping was not
17 just an adjunct robbery. He didn't
18 just intend to take them to another
19 area and dispose of them, and I think
20 that that is real, real well shown by
21 his actions and what he did.
22 Why did he take them to another
23 area? Why did he want to get Kim out
24 of that truck? Why did he jerk Kim out
25 of the truck and try to leave Chip in

1 the truck? Because he was committing
2 further acts that would cause her
3 bodily harm or terror, and he was also
4 at that point in time engaged therefore
5 in a crime that had a different aspect
6 to it, something different than just
7 pecuniary gain. He was enjoying this.
8 He was going to go beyond what was
9 necessary just to rob these two young
10 people.
11 Now, the defense is going to have
12 an opportunity to address mitigating
13 factors to you. I can only assume that
14 Mr. Parker will argue to you that you
15 should consider it as mitigation that
16 this defendant's mother and father died
17 in the fashion that was described by
18 Mr. Green's older sister. Keep in
19 mind, as I pointed out on
20 cross-examination, that's a terrible
21 thing whether you live with your
22 parents or not, but certainly it would
23 carry more weight if Mr. Green was
24 still living at the home as a
25 youngster. This defendant had already

1 left the home, was already in New York
2 living on his own and had already
3 committed the robbery that you heard
4 about and was in prison at the time
5 that all this happened; and I think the
6 effect of that, whatever mitigating
7 effect that might have, is certainly
8 lessened a great deal by those further
9 facts.
10 I'd also submit that the
11 mitigation offered that he saved the
12 life of Mr. Jones, I'm not sure from
13 the facts that were offered just how
14 heroic that was. I suppose it is some
15 mitigation that he did take the time to
16 stop, stop and save the life of one of
17 his friends when he was drowning. I
18 don't know what type of person wouldn't
19 save the life of their own best friend,
20 and I certainly would submit to you
21 that the weight you should give that he
22 at least stopped and saved one of his
23 best friends from drowning, that
24 doesn't speak all that well of him.
25 Again, I didn't hear anything awfully

1 heroic about that, that he swam through
2 a hundred yards of crashing surf or
3 something, and I don't know how much
4 weight that should be given by you, but
5 I submit that's your decision. I
6 submit to you that the State's position
7 is not as much.
8 The other aggravating factor --
9 mitigating factor that I believe that
10 Mr. Parker will argue to you has to do
11 with a mitigating factor that's set
12 forth in the statutes which would be
13 that the defendant acted under extreme
14 duress or under the substantial
15 domination of another person, and the
16 instruction will go on and tell you
17 that duress as used herein refers to
18 external provocation such as
19 imprisonment or the use of force or
20 threats. Now, I submit to you that
21 that particular mitigating factor is
22 one which you could properly find if
23 this defendant had been forced by some
24 other person to commit this series of
25 crimes.

1 Mr. Parker is going to argue to
2 you that it applies because Chip Flynn
3 tried to save the life of himself and
4 Kim and shot first at the defendant,
5 and, therefore, you should find that
6 the defendant acted under extreme
7 duress. He had to defend himself
8 against Chip Flynn. Now, if you want
9 to, you have the right to find that
10 that is mitigation, but I submit to you
11 to find that ignores the fact that Chip
12 Flynn is the one who acted under
13 extreme duress. This defendant created
14 that situation. This defendant is the
15 one that robbed Chip and robbed Kim and
16 kidnapped them and took them to a
17 remote area where Chip felt the only
18 thing he could do to save his life and
19 Kim's was to try to shoot this man with
20 a gun behind his back; and for you to
21 find somehow that it's mitigating for
22 him, I submit to you it's terribly
23 illogical, but again that's your
24 decision that you must make.
25 In summary let me just say that

1 and, say, a particular mitigating
2 circumstance. Does that mitigating
3 circumstance carry much weight with you
4 in your deliberation? Do you think
5 it's worthy of much weight? Do you
6 believe the aggravating circumstance is
7 worthy of much weight? Then you total
8 the weight that each of these
9 aggravating circumstances deserves
10 versus the weight of the total the
11 mitigation deserves.
12 I submit to you that if do you
13 that in this case and if you follow the
14 law, if you follow the instructions the
15 court is going to give you, that there
16 really can only be one just verdict in
17 this case, that is, for you to
18 recommend the death penalty.
19 Thank you.
20 MR. PARKER: May it please the
21 court.
22 THE COURT: Mr. Parker.
23 MR. PARKER: I tried to determine
24 what I would say to you folks today. I
25 tried to go over in my head the words

1 that I would use, and I keep falling
2 back on the fact that facts persuade
3 juries, not lawyers. It's been a real
4 exercise in introspection for myself.
5 It makes me consider who I am and what
6 I am and where I come from and what I
7 feel about things, about life; and I
8 realized -- and I believe I speak for
9 Mr. White and Mr. Williams -- that no
10 matter how often you find yourself
11 standing before the community, nothing
12 in your frame of reference, nothing in
13 your life experience, nothing in your
14 education and nothing in the number of
15 times that we do this ever prepares us
16 emotionally for these sort of
17 situations, fully prepares us for this.
18 To argue for a man's life, to beg
19 for a man's life, whatever word you
20 choose by your verdict, ladies and
21 gentlemen, you have established and
22 sent a message that you believe that
23 beyond and to the exclusion of every
24 reasonable doubt that Crosley is the
25 one that did this. You said it loud

1 and clear.
2 Mr. Green has to sit there at that
3 table in this courtroom in front of you
4 and accept that fact, accept the fact
5 that guilt has been determined by you
6 and that in this phase you have two
7 choices, two recommendations, whether
8 or not the State of Florida by lawful
9 means should execute my client by
10 running thousands of volts of
11 electricity through his body or whether
12 or not justice is better served by
13 Mr. Green spending the rest of his life
14 in prison. That's the decision that
15 you make today.
16 The judge is going to read to you
17 the law and tell you that your decision
18 carries great weight as it should.
19 That's why it's important that we view
20 what occurred the late evening hours of
21 April the 3rd, 1989, early morning
22 hours of April 4th, 1989, in its proper
23 perspective, in its proper place.
24 We have to live with our
25 decisions, ladies and gentlemen. You

1 said Mr. Green did this. Mr. Green has
2 to live with that.
3 Mr. White talked about aggravating
4 circumstances and mitigating
5 circumstances, and the judge is going
6 to talk to you about those. He's going
7 to use those words, and they're all
8 very clinical and they're very
9 statutory. What it means is: If you
10 feel this crime was so bad that we
11 should execute Mr. Green, then that's
12 what you believe, and that's what
13 you'll recommend.
14 The judge is going to read to you
15 the same definition of heinous,
16 atrocious and cruel Mr. White read to
17 you. It's a circumstance, statutory
18 circumstance, or element, that the
19 legislature of the State of Florida,
20 the Supreme Court, has adopted to
21 define a crime under this circumstance
22 that warrants the death penalty. I
23 don't mean to be redundant. Mr. White
24 effectively sort of takes the impact
25 out of those words.

1 Heinous means extremely wicked or
2 shockingly evil. Shockingly evil.
3 Atrocious means outrageously wicked and
4 vile. Cruel means designed to inflict,
5 designed to inflict a high degree of
6 pain with utter indifference to or even
7 enjoyment of the suffering of others.
8 Indifference to or enjoyment of the
9 suffering of others.
10 What is intended to be included
11 are those capital crimes where the
12 actual commission of the capital felony
13 was accompanied by such additional
14 facts as to set the crime apart from
15 the norm of capital felonies, the
16 consciousless or pitiless crime which
17 is unnecessarily tortuous to the
18 victim. Heinous, atrocious and cruel.
19 Mr. White recaps what he believes
20 the evidence showed that should prove
21 to you beyond and to the exclusion of a
22 reasonable doubt that that aggravating
23 circumstance exists in this case.
24 If Mr. Green wanted to kill those
25 two people, if there was some design,

1 if there was some consciousless,
2 pitiless design, he would have done it
3 at Holder Park. He would have taken
4 the money, and he would have shot them
5 dead right there, and that didn't
6 happen. By Kim's own testimony the
7 firing of the gun at that time appeared
8 to be an accident. No one was hurt.
9 Mr. Flynn was tied surely, but he
10 wasn't tied such that he was in pain.
11 He wasn't tied to torture him. He was
12 tied in a fashion where some comfort
13 was afforded.
14 They weren't tortured. They
15 weren't beaten there at Holder Park.
16 They weren't pistol-whipped. They did
17 as they saw a deputy and they moved to
18 the grove, and it got out offhand,
19 ladies and gentlemen. It just went
20 bad.
21 To say that Mr. Green placed
22 himself in that position at Holder Park
23 by your verdict you believe, but
24 somehow to deny that when you're shot
25 at -- no matter what you've done to

1 place yourself in that position, when
2 someone else institutes shooting at
3 you, to deny the human instincts of
4 self-preservation, the duress, the
5 pressure that that creates upon you not
6 wanting to die is to deny that
7 Mr. Green is a human being. Ladies and
8 gentlemen, as you look across the room,
9 no matter what you think of my client
10 he is a living, breathing human being.
11 When those shots rang out, the
12 defendant did what anybody would have
13 done, reacted. Those are the facts,
14 ladies and gentlemen. The State wants
15 you somehow to bridge some gap to
16 believe something where there's no
17 facts. They want you to be so afraid
18 of Mr. Green that you will believe that
19 he had some ulterior motive. The facts
20 are what you have to base your judgment
21 on and ultimately your recommendation.
22 When Kim Hallock broke and ran,
23 she wasn't gunned down. When she broke
24 and ran again, she wasn't gunned down.
25 When Kim Hallock got in the truck, she

1 wasn't gunned down. There were no
2 bullet holes in the truck. You never
3 heard one bit of testimony that
4 suggests that Mr. Green was shooting at
5 her, trying to stop her, trying to kill
6 her in any way, shape or form. They
7 want you to believe that. It's not
8 there. Miss Hallock was able to get
9 away, certainly frightened. God knows,
10 she was frightened.
11 The testimony before this court
12 and before you was that there was a lot
13 of gunfire, gunfire initiated by a
14 young man who should be with us today,
15 and that unfortunately, God knows
16 unfortunately, one of the bullets
17 fired, struck that young man in the
18 chest and brought about his death.
19 Pitiless and consciousless, is that
20 what happened? Is that what happened
21 out there, or did what the defendant
22 do, was it: Oh, my gosh, what have I
23 done? I've got to leave.
24 If he was consciousless and
25 pitiless would it not be more

1 appropriate for Mr. Green to have, once
2 he noted this young man was disabled
3 and shot and wounded and hurt, to walk
4 up to Mr. Flynn and stop it all? No
5 more witnesses.
6 Ladies and gentlemen, that's
7 heinous, atrocious and cruel. That's
8 the kind of activity that separates
9 other crimes from this one. Mr. Green
10 left another witness alive potentially
11 to testify against him. Is that the
12 actions of consciousless and pitiless,
13 someone who feels no pity for anyone?
14 No.
15 Little weight to the fact that my
16 client years ago saved the life of
17 Mr. Jones who was drowning, who
18 believed he was drowning, who believed
19 my client saved his life. You're
20 supposed to sweep that under the mat.
21 You're supposed to disregard that
22 somehow. When, in fact, the truth of
23 the matter is that Mr. Jones wouldn't
24 be here today but for Mr. Green.
25 That's a fact that's before you, and

1 you're supposed to just disregard it.
2 You're supposed to disregard that
3 when my client was 15 or 16 years of
4 age, the formula to years, if you will,
5 no matter what had occurred, no matter
6 how angry he might have been, no matter
7 what he could have done to find out
8 that your parents, your parents were
9 dead, not from a car accident, not in
10 an airplane crash, but from a father
11 who took a pistol and shot his mother
12 to death and then turned the pistol on
13 himself. You're just to sweep that
14 under the rug. That doesn't matter.
15 That shouldn't have any impact on you
16 as to whether or not you recommend
17 death by electrocution or life in
18 prison.
19 They want you to believe that the
20 previous conviction for the robbery is
21 an aggravating circumstance. It rises
22 to that level wherein you should decide
23 that he should receive the death
24 penalty. Well, it was so bad that he
25 got youthful offender treatment, a 15-,

1 16-year-old boy.
2 Ladies and gentlemen, we read the
3 newspapers every day, and we're all no
4 different. We're afraid when we read
5 the paper. We're scared of what
6 happens out there. Sometimes I think
7 we might overreact. Please don't
8 overreact here. Please don't overreact
9 in this courtroom.
10 Mr. Green has a seven-year-old
11 son. Certainly Mr. Flynn was seven
12 years old at one time. Certainly, as I
13 speak, Mr. Flynn saying to himself,
14 "What about my son? What about what
15 happened to my son?"
16 The fact remains that Mr. Flynn is
17 no longer with us. We still have
18 Mr. Green. Mr. Green still has a
19 seven-year-old son who loves him, who
20 plays with him, who goes to the park
21 with him. No more. At a bear minimum
22 not for the rest of that boy's life.
23 Mr. White is correct. You
24 shouldn't tabulate the numbers.
25 I talked about passion when I

1 first spoke with you. I suggested that
2 passion never accomplished anything
3 that was logic in the facts. Maybe I
4 was wrong. Maybe passion is
5 important. Maybe what you feel in the
6 heart is important.
7 The proof is that the standard
8 required is beyond and to the exclusion
9 of a reasonable doubt. You have to
10 believe these aggravating circumstances
11 exist beyond a reasonable doubt, and
12 then you have to believe that when you
13 weigh them all, that the weight of
14 those outweigh the mitigation. You
15 have to say that this crime is set
16 apart.
17 Mr. Flynn was armed with a firearm
18 from the time they left Holder Park on
19 into the orange grove until he was
20 shot. The only reason Mr. Green wasn't
21 shot was because Kim Hallock was too
22 afraid to move forward. I'm not sure
23 that, notwithstanding the fact that
24 Mr. Flynn was tied, I'm not sure that
25 the fear Mr. Flynn may have felt or the

1 fear that Kim may have felt was the
2 same fear that one would feel if they
3 weren't armed, the same helplessness
4 that one would feel, the same
5 circumstance that would set this crime
6 apart. Not a person in this room knows
7 the answer to the question: What would
8 have happened if Chip Flynn hadn't
9 fired his gun? There's no facts.
10 I guess I'm reluctant to sit down
11 because I realize that I'm helpless
12 once I sit down.
13 Thank you.
14 THE COURT: Ladies and gentlemen,
15 we're going to take another break.
16 It's going to be a short break. At the
17 conclusion of the break you'll come
18 back in here for a short while, and
19 then you'll be released to commence
20 your deliberations.
21 Thank you.
22 THE BAILIFF: Court will be in
23 recess.
24 THE COURT: About ten minutes.
25 THE BAILIFF: About ten minutes.

1 (Whereupon, a recess was taken.)
2 (Whereupon, the following
3 proceedings were had outside the
4 presence and hearing of the jury:)
5 THE BAILIFF: Remain seated. This
6 court is back in session.
7 THE COURT: The defendant is
8 present. The attorneys are present.
9 There's an error in here. Unless
10 it's been changed in the new standard
11 instructions, I think it may be a
12 problem. There was a typo here, and I
13 put whiteout there, and then here, "the
14 aggravating circumstances you may
15 consider are limited to the following
16 established by the evidence." That
17 sounds like I'm passing on that. The
18 standard I have says "to any of the
19 following that are established by the
20 evidence."
21 MR. WHITE: Okay.
22 The other thing that's on the
23 second page, you can white that out and
24 put 1 and 2 instead of A and B.
25 That's my fault.

1 And then I took out "guilty," and
2 I put "guilt."
3 On the verdict form, that's fine.
4 MR. WHITE: She can retype that
5 real fast.
6 Have you got the copies that I
7 had?
8 THE CLERK: Yes.
9 MR. WHITE: Can you retype those?
10 THE COURT: Do you have the
11 changes marked on the verdict form?
12 MR. WHITE: Well, are these
13 verdict forms okay?
14 THE COURT: I'll get these typed
15 while you're doing that.
16 THE CLERK: Okay. This is Rob's
17 set, and that's the State's set
18 (indicating).
19 THE COURT: The majority of the
20 jury by vote of such and such advise
21 and recommend --
22 They say the same thing.
23 I'll redo this one.
24 Bring the jury back in so I can
25 give them another 15 minutes.

1 I'm going to tell the jury, if
2 there's no objection, that I have to
3 get something typed for them and it
4 will be another 15 minutes.
5 MR. WHITE: That sounds fine.
6 It's better than you saying that the
7 attorneys can't get these jury
8 instructions right so you have to wait
9 some more.
10 THE COURT: It's my
11 responsibility.
12 (Whereupon, the following
13 proceedings were had in the presence
14 and hearing of the jury:)
15 THE COURT: Ladies and gentlemen,
16 I have to get something typed for you.
17 It's going to take a little bit longer
18 than I anticipated so your break is
19 going to be another 15 minutes.
20 Thank you.
21 THE BAILIFF: Court will be in
22 recess 15 minutes.
23 (Whereupon, a recess was taken.)
24 (Whereupon, the following
25 proceedings were had outside the

1 presence and hearing of the jury:)
2 THE COURT: The defendant is
3 present, and the attorneys are present.
4 Have you had an opportunity to
5 look at the verdict form, Mr. White?
6 MR. WHITE: Judge, no. I didn't
7 realize the ones you gave me were the
8 copies that I originally gave you. You
9 need to let us see that original set, I
10 guess.
11 THE COURT: I think the standard
12 instruction says "pecuniary gain,"
13 doesn't it?
14 MR. PARKER: That's correct.
15 THE COURT: Is there any problem
16 with "financial" instead of
17 "pecuniary"?
18 MR. WHITE: Actually the standard
19 says "financial."
20 THE COURT: Does it?
21 MR. WHITE: Sure.
22 THE COURT: Great.
23 MR. PARKER: That's correct, your
24 Honor.
25 THE COURT: The statute --

1 MR. WHITE: The statute says
2 "pecuniary." I noted it because
3 that's the first time I really picked
4 up on the difference. They usually
5 don't let me use that one.
6 THE COURT: So these verdict forms
7 look okay?
8 MR. PARKER: I'm just looking
9 through them.
10 MR. WHITE: Okay. We've got so
11 many copies I'm looking at the wrong
12 ones.
13 THE COURT: I know.
14 Do the verdict forms meet your
15 approval, Mr. White?
16 MR. WHITE: Yes, your Honor.
17 THE COURT: And yours,
18 Mr. Parker?
19 MR. PARKER: Yes, your Honor.
20 THE COURT: Mr. Parker, do the
21 jury instructions properly reflect my
22 rulings from the earlier hearing we
23 had?
24 MR. PARKER: May I have just a
25 moment to go over them?

1 THE COURT: Yes, sir.
2 MR. PARKER: I'm satisfied, Judge.
3 THE COURT: Is the State
4 satisfied?
5 MR. WHITE: Yes, your Honor, we
6 are.
7 THE COURT: Please return the
8 jury.
9 (Whereupon, the following
10 proceedings were had in the presence
11 and hearing of the jury:)
12 THE COURT: Please be seated,
13 ladies and gentlemen.
14 Ladies and gentlemen of the jury,
15 it is now your duty to advise the court
16 as to what punishment should be imposed
17 upon the defendant for his crime of
18 felony murder in the first degree. As
19 you have been told, the final decision
20 as to what punishment shall be imposed
21 is the responsibility of the judge.
22 However, your advisory verdict will be
23 given great weight by the court, and it
24 is your duty to follow the law that
25 will now be given to you by the court

1 and render to the court an advisory
2 sentence based upon your determination
3 as to whether sufficient aggravating
4 circumstances exist to justify
5 imposition of the death penalty and
6 whether those aggravating circumstances
7 outweigh any mitigating circumstances
8 which may exist.
9 Your advisory sentence should be
10 based upon the evidence that you have
11 heard while trying the guilt or
12 innocence of the defendant and evidence
13 that has been presented to you in these
14 proceedings. The aggravating
15 circumstances that you may consider are
16 limited to any of the following that
17 are established by the evidence:
18 1, the defendant has been
19 previously convicted of a felony
20 involving the use or threat of violence
21 to some person. The crime of robbery
22 with a firearm and kidnapping are
23 felonies involving the use or threat of
24 violence to another person.
25 2, the crime for which the

1 defendant is to be sentenced was
2 committed while he was engaged in the
3 commission of or an attempt to commit
4 or in flight after committing or
5 attempting to commit the crime of
6 robbery or kidnapping.
7 3, the crime for which the
8 defendant is to be sentenced was
9 especially heinous, atrocious or
10 cruel.
11 Heinous means extremely wicked or
12 shockingly evil. Atrocious means
13 outrageously wicked and vile. Cruel
14 means designed to inflict a high degree
15 of pain with utter indifference to or
16 even enjoyment of the suffering of
17 others. The kind of crime intended to
18 be included as heinous, atrocious or
19 cruel is one accompanied by additional
20 acts that show that the crime was
21 consciousless or pitiless and was
22 unnecessarily tortuous to the victim.
23 4, the crime for which the
24 defendant is to be sentenced was
25 committed for financial gain.

1 If you find the aggravating
2 circumstances do not justify the death
3 penalty, your advisory sentence should
4 be one of life imprisonment without
5 possibility of parole for 25 years.
6 Should you find sufficient aggravating
7 circumstances do exist, it will then be
8 your duty to determine whether
9 mitigating circumstances exist and
10 whether the aggravating circumstances
11 outweigh the mitigating circumstances.
12 Among the mitigating circumstances
13 you may consider if established by the
14 evidence are:
15 1, the defendant acted under
16 extreme duress or under substantial
17 domination of another person. Duress
18 as used herein refers to external
19 provocation such as imprisonment or the
20 use of force or threats.
21 2, any aspect of the defendant's
22 character or record and any other
23 circumstances of the offense.
24 Each aggravating circumstance must
25 be established beyond a reasonable

1 doubt before it may be considered by
2 you in arriving at your decision. If
3 one or more aggravating circumstances
4 are established, you should consider
5 all the evidence tending to establish
6 one or more mitigating circumstances
7 and give that evidence such weight as
8 you feel it should receive in reaching
9 your conclusion as to the sentence that
10 should be imposed.
11 A mitigating circumstance need not
12 be proved beyond a reasonable doubt by
13 the defendant. If you are reasonably
14 convinced that a mitigating
15 circumstance exists, you may consider
16 it as established.
17 The sentence that you recommend to
18 the court must be based upon the facts
19 as you find them from the evidence and
20 the law. Your decision should not be
21 of a mere tabulation of the number of
22 aggravating circumstances versus
23 mitigating circumstances. You should
24 weigh the aggravating circumstances
25 against the mitigating circumstances,

1 and your advisory sentence must be
2 based on these considerations.
3 In these proceedings it is not
4 necessary that the advisory sentence of
5 the jury be unanimous. The fact of
6 determination of whether you recommend
7 a sentence of death or a sentence of
8 life imprisonment in this case can be
9 reached by a single ballot should not
10 influence you to act hastily or without
11 due regard to the gravity of these
12 proceedings. Before you ballot, you
13 should carefully weigh, sift and
14 consider the evidence and all of it
15 realizing that human life is at stake
16 and bring to bear the best judgment in
17 reaching your advisory sentence.
18 If a majority of the jury
19 determine Crosley Alexander Green
20 should be sentenced to death, your
21 advisory sentence will be: "A majority
22 of the jury by a vote of blank advise
23 and recommend the court that it impose
24 the death penalty upon Crosley
25 Alexander Green."

1 On the other hand, if by six or
2 more votes the jury determines that
3 Crosley Alexander Green should not be
4 sentenced to death, your advisory
5 sentence will be: "The jury advises
6 and recommends to the court that it
7 impose a sentence of life imprisonment
8 upon Crosley Alexander Green without
9 possibility of parole for 25 years."
10 You will now retire to consider
11 your recommendation. When you have
12 reached an advisory sentence in
13 conformity with these instructions,
14 that form of recommendation should be
15 signed by your foreman and returned to
16 the court.
17 Counsel, come forward.
18 (Whereupon, the following
19 proceedings were had outside the
20 hearing of the jury:)
21 THE COURT: Is the State satisfied
22 with the reading of the instructions?
23 MR. WHITE: Yes, your Honor.
24 THE COURT: Is the defendant?
25 MR. PARKER: Yes.

1 THE COURT: Thank you.
2 (Whereupon, the following
3 proceedings were had within the hearing
4 of the jury:)
5 THE COURT: Miss Davis, would you
6 step down, please, now that you're in
7 the courtroom.
8 Counsel come forward again a
9 minute. I'm sorry.
10 (Whereupon, the following
11 proceedings were had outside the
12 hearing of the jury:)
13 THE COURT: You all --
14 MR. WHITE: I think it is proper.
15 I don't know if you need it or not, but
16 they're entitled to it.
17 MR. PARKER: The instructions say
18 "all the evidence."
19 (Whereupon, the following
20 proceedings were had within the hearing
21 of the jury:)
22 THE COURT: Mr. Osborne, please
23 remove the jury.
24 (Whereupon, the following
25 proceedings were had outside the

1 presence and hearing of the jury:)
2 THE COURT: Miss Davis --
3 MS. DAVIS: Yes.
4 THE COURT: Would you come
5 forward, please.
6 I want to thank you very much for
7 all the time you've given us. You've
8 been such a good sport.
9 MS. DAVIS: You're welcome.
10 THE COURT: There was a long wait
11 and I want to tell you --
12 MS. DAVIS: I understand.
13 THE COURT: -- you had to sit
14 there all that time during the guilt
15 phase and the sentence phase. All
16 kinds of things can happen. I don't
17 want you to think we're just taking
18 advantage of you.
19 MS. DAVIS: No, I don't.
20 Thank you.
21 THE COURT: Thank you very much.
22 MS. DAVIS: You're welcome.
23 THE COURT: I assume you're
24 leaving.
25 MS. DAVIS: Yes, I am.

1 THE BAILIFF: This court will be
2 at ease.
3 (Whereupon, a recess was taken.)
4 (Whereupon, the following
5 proceedings were had outside the
6 presence and hearing of the jury:)
7 THE BAILIFF: Remain seated.
8 This court is back in session.
9 THE COURT: Those of you who are
10 in the courtroom and have some interest
11 in this case, remember, this is a court
12 of law and I require that there be
13 order at all times. There won't be any
14 demonstrations. I understand emotions
15 run awfully high in this sort of
16 situation, and if you feel you might
17 have a problem with that, you should
18 remove yourself from the courtroom at
19 this time.
20 It's my understanding that the
21 jury has reached its verdict which is
22 not the conclusion of this matter
23 regardless of what the verdict is.
24 There will be other hearings set, one
25 of which will be for the purpose of

1 imposition of sentencing. Since I
2 don't know what the jury verdict is,
3 I've not scheduled that. Immediately
4 following release of the jury, I will
5 come up with some future dates.
6 Please return the jury.
7 The defendant is present, and the
8 attorneys are present
9 THE BAILIFF: We need to wait on
10 the clerk.
11 THE COURT: Where is she?
12 THE BAILIFF: Downstairs.
13 THE COURT: Please return the
14 jury.
15 (Whereupon, the following
16 proceedings were had in the presence
17 and hearing of the jury:)
18 THE COURT: Please be seated.
19 Mr. Bedle, has the jury reached
20 its advisory verdict?
21 MR. BEDLE: Yes, sir.
22 THE COURT: Would you deliver the
23 verdict to the bailiff, please.
24 The defendant will stand.
25 Will the clerk announce the

1 verdict, please.
2 THE CLERK: State of Florida
3 versus Crosley Alexander Green.
4 Advisory sentence: A majority of the
5 jury by a vote of eight to four advise
6 and recommend to the court that it
7 impose the death penalty upon Crosley
8 Alexander Green, dated this 27th day of
9 September, 1990, signed Frederick L.
10 Bedle, Foreman.
11 THE COURT: Do you wish the jury
12 polled, Mr. Parker?
13 MR. PARKER: No, your Honor.
14 THE COURT: Ladies and gentlemen,
15 I want to thank you for the time and
16 work you gave this very difficult
17 case. It's the most difficult case we
18 can call upon members of our community
19 to work on, and we recognize that, and
20 I know you've given the case not only
21 long hours but also a lot of
22 consideration.
23 For years we've recognized that a
24 jury's votes and deliberations and
25 discussions should remain their private

1 affairs as long as they wish it.
2 Therefore, the law gives you the
3 privilege of not discussing what
4 happened in the jury room except by
5 court order. Some people may seek to
6 find fault with you. Others may talk
7 with you and question you from a simple
8 sense of curiosity. It will be up to
9 you to decide whether you preserve your
10 privilege not to speak about the case.
11 I'd ask the bailiff to take you to
12 my chambers, and if you'll wait there
13 for a few minutes, we'll get you on
14 your way.
15 Thank you.
16 (Whereupon, the following
17 proceedings were had outside the
18 presence and hearing of the jury:)
19 THE COURT: Be seated, gentlemen.
20 Some of you are familiar with what
21 I want in this kind of situation. I'd
22 like you to do a memo not so much for
23 the type of argument you would address
24 to the jury but the legal argument that
25 are already preliminarily addressed in

1 the charge conference. I'd like that
2 due by October 22nd.
3 I'd like you to be prepared to
4 argue the case. I'd like to hear from
5 Mr. Green as to anything additional he
6 wants to put before the court on
7 November the 6th.
8 Sentencing will occur on November
9 the 20th. All these hearings will
10 begin at eight o'clock in the morning.
11 I will advise counsel where these will
12 take place. I'm not sure due to the
13 courtroom shortage in the county where
14 I will be on those dates.
15 The argument I would like to allow
16 two hours. That's certainly not an
17 indication that you have to take it.
18 If you feel you can address it in
19 fifteen minutes and you're there only
20 to supplement what you put in writing,
21 that's fine. I want to make sure you
22 have at least that much time. If you
23 find you need more time, we'll work
24 that out at that time.
25 The November 20th hearing will not

1 be a long hearing. It will begin at
2 8:00, and we'll take care of everything
3 at that time.
4 I will require a Presentence
5 Investigation Report to be done. I do
6 not want it. I'm going to handle these
7 sentences separately. That sentencing
8 will be set out sometime in the
9 future. Out of an abundance of caution
10 since I've had signals crossed before,
11 I'll again order there not be a victim
12 impact section. The State can put
13 whatever they want before me at the
14 time of sentencing. What I'm concerned
15 with is, if they put it in the report
16 and somehow despite of my ruling it
17 comes to me in the mail, then we have
18 to go through some unnecessary steps.
19 I'm going to order that it be prepared
20 but not sent to me prior to November
21 21st.
22 My clerk advises me that I'm on
23 the facilities committee for the
24 county, the users committee. They meet
25 on Tuesdays, and I set these hearings

1 for Tuesdays so let me back up.
2 The memo is still due on October
3 22nd. The hearing for purposes of
4 argument will be November the 7th, and
5 the sentencing will be November 21st,
6 on a Wednesday.
7 THE BAILIFF: Court will be in
8 recess.
9 (Whereupon, at 3:50 p.m. the
10 proceedings were concluded.)
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IN THE CIRCUIT COURT OF
THE EIGHTEENTH JUDICIAL
CIRCUIT, IN AND FOR
BREVARD COUNTY, FLORIDA

CASE NO. 89-4942-CF-A

STATE OF FLORIDA,

Plaintiff,

vs.

CROSLEY ALEXANDER GREEN,

Defendant.

FILED ... OFFICE
FEB 8 4 25 PM '91
R.C. WINSTEAD, JR.
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BY ___ D.C.

JUDGMENT AND SENTENCE

The defendant, CROSLEY ALEXANDER GREEN, is before the court for sentencing. On September 5, 1990, after hearing the evidence and instructions on the law, the jury returned a verdict of guilty on the charges of: Count I, First Degree Felony Murder, Section 782.04(1)(a)2, Florida Statutes; Count II, Robbery With a Firearm, Section 812.13(1), 812.13(2)(a), Florida Statutes; Count III, Robbery With a Firearm, Sections 812.13(1), 812.13(2)(a), Florida Statutes; Count IV, Kidnapping, Sections 787.01(1)(a)2, 787(1)(a)3, Florida Statutes; and Count V, Kidnapping, Sections 787.01(1)(a)2, 787(1)(a)3, Florida Statutes. On September 27, 1990, the jury, in its advisory verdict, recommended the defendant be sentenced to death by a vote of 8-4. A presentence investigation report was prepared by Probation and Parole Services.

The court considered the testimony and evidence introduced at trial and at the penalty phase of these proceedings. It also considered the arguments made at the sentencing hearing, the advisory verdict of the jury, and the arguments of counsel. The

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court now determines whether any aggravating circumstances have been established beyond a reasonable doubt, whether any mitigating circumstances exist, and what weight these aggravating and mitigating circumstances should be given if found to exist.

The operative facts relevant to sentencing are now set forth. On April 4, 1989, the defendant walked past Charles Flynn, Jr. and Kimberly Sue Hallock as they were parked in Flynn's pick-up truck at Holder Park, Mims, Florida, at approximately 11:30 p.m.. A short time later Flynn exited the truck to urinate and was approached by the defendant armed with a pistol. Hallock, who remained seated in the center of truck seat, heard Flynn say, "Hold on, wait a minute, man, put it down." She then removed a pistol from the glove compartment and put it under a denim jacket on the truck seat. The defendant ordered Flynn to get on his knees and Hallock to scoot toward the driver's seat. He asked if they had money. Flynn said he didn't have his wallet, and Hallock said she had five dollars, which she took from her purse and handed over. While he held his pistol to Flynn's head, he ordered Hallock to remove the lace from one of Flynn's high-top tennis shoes which he saw in the truck. The defendant grabbed the lace from Hallock and tied Flynn's hands behind his back. While he was tying Flynn's hands, his pistol discharged. He then removed Flynn's wallet from his pocket, threw it at Hallock who was still in the truck, and told her to count. Hallock got out of the truck, counted $185.00, and turned the money over to the defendant.

After he had the money the defendant ordered Hallock to start

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the truck. Ignoring pleas from Flynn that Hallock be left behind, the defendant ordered Flynn and Hallock back into the truck. Hallock started to get in first, but the defendant pulled her back. Flynn then got in and was seated on the passenger side. Hallock got in next and was seated in the middle. The defendant drove the truck between two and four miles to a citrus grove in North Brevard County, requiring his victims to keep their heads down so as not to see where they were going while holding his pistol to Hallock's side. During the ride Flynn found the pistol Hallock had earlier hidden under the jacket. Upon coming to a stop the defendant got out of the truck and pulled Hallock out through the door telling Flynn to stay in the truck. As he tried to close the door behind them, Flynn blocked the door. Hallock broke away and tried to escape, but the defendant threw her to the ground, and while holding the gun to her head, told her, "You are a slut, and you'll do what I say or I'll blow your brains out." With his hands still tied, Flynn then moved to the edge of the truck seat with the pistol Hallock had earlier hidden, and fired from behind his back. He then dove forward onto the ground. The defendant then let go of Hallock who reentered the truck. As she drove away, Hallock heard Flynn yell, "Go, go go," and saw the defendant turn, standing over Flynn, firing his handgun in Flynn's direction.

Hallock drove to safety and reported the incident by telephone at 1:11 a.m. At 1:42 a.m. Flynn was found by sheriff's deputies lying on his stomach, with his hands tied behind his back. He was conscious when he was found, but his only response to questions was

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"Get me out of here - I want to go home." He lost consciousness, and by the time medical assistance arrived at 1:57 a.m. he was dead. The cause of death was a gunshot wound to his chest.

AGGRAVATING CIRCUMSTANCES - FLA. STAT. 921.141(5)

1. FLA. STAT. 921.141(5)(a)
   WHETHER THE MURDER WAS COMMITTED BY A PERSON UNDER SENTENCE OF IMPRISONMENT.

   This aggravating element was not present. The jury was not instructed as to this aggravating circumstance.

2. FLA. STAT. 921.141(5)(b)
   WHETHER THE DEFENDANT WAS PREVIOUSLY CONVICTED OF ANOTHER CAPITAL FELONY OR OF A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE.

   The state urges the court to consider contemporaneous convictions for robbery and kidnapping in support of this aggravating circumstance as allowed in Brown v. State, 473 So.2d 1260 (Fla. 1985) and Correll v. State, 523 So.2d 562 (Fla. 1988). Because both Flynn and Hallock were victims of kidnapping and robbery, the robbery and kidnapping of Hallock could be considered as the basis for finding the existence of this circumstance. Wasko v. State, 505 So.2d 1314 (Fla. 1987). In this case, however, since the kidnappings are the basis for the aggravating circumstance, "Capital Felony Committed While Defendant Engaged in the Commission of Kidnapping," Section 921.141(5)(d), Florida Statutes, discussed in Paragraph 4 below, and the robberies are the basis for the aggravating circumstance, "Murder Was Committed for Pecuniary Gain," Section 921.141(5)(f), Florida Statutes, discussed in Paragraph 6 below, it would be improper doubling to consider these felonies for purpose of this aggravating circumstance.

   The state however did establish beyond a reasonable doubt that the defendant was convicted of another armed robbery on January 26, 1977, in the State of New York. This aggravating circumstance does exist. See Cooper v. State, 336 So.2d 1133 (Fla. 1976).

3. FLA. STAT. 921.141(5)(c)
   WHETHER THE DEFENDANT KNOWINGLY CREATED A GREAT RISK TO MANY PERSONS.

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This aggravating element was not present. The jury was not instructed as to this aggravating circumstance.

4. FLA. STAT. 921.141(5)(d)
WHETHER THE CAPITAL FELONY WAS COMMITTED WHILE THE DEFENDANT WAS ENGAGED, OR WAS AN ACCOMPLICE, IN THE COMMISSION OF, OR AN ATTEMPT TO COMMIT, OR FLIGHT AFTER COMMITTING OR ATTEMPTING TO COMMIT, KIDNAPPING.

The indictment charges felony murder, the underlying felonies being robbery with a firearm. The defendant was also engaged in the crime of kidnapping of Kimberly Hallock and Charles Flynn, Jr. when he murdered Charles Flynn, Jr. The defendant was found guilty of both kidnappings by the jury as a result of having forced Hallock and Flynn into Flynn's truck against their will and at gun point, and then driving them a distance of two to four miles where he held them at gun point until he murdered Charles Flynn, Jr.

The state has established the existence of the aggravating circumstance beyond a reasonable doubt.

5. FLA. STAT. 921.141(5)(e)
WHETHER THE MURDER WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST OR EFFECTING AN ESCAPE FROM CUSTODY.

This aggravating element was not present. The jury was not instructed as to this aggravating circumstance.

6. FLA. STAT. 921.141(5)(f)
WHETHER THE MURDER WAS COMMITTED FOR PECUNIARY GAIN.

The state has established beyond a reasonable doubt that the defendant committed this crime for pecuniary gain. The defendant robbed the victim and Kim Hallock prior to kidnapping them and drove them to the citrus grove where he shot the victim, but these events were all part of a single episode.

The defendants first and primary motive was the successful robbery of his victims. The taking of money from Hallock and Flynn was not an afterthought as described in Hill v. State, 549 So.2d 179 (Fla. 1989). There is more than an inference that the crime was committed for monetary gain as described in Simmons v. State, 419 So.2d 316 (Fla. 1982). The events described above occurred in a single episode which resulted in Flynn's death. Never did the defendant abandon his effort as did the defendant in Rogers v. State, 511 So.2d 526 (Fla.

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1987). See Copeland v. State, 457 So.2d 1012 (Fla. 1984), Parker v. State, 476 So.2d 134 (Fla. 1985).

This is not an improper doubling of the aggravating circumstance under Fla. Stat. 921.141(5)(d) because the defendant also committed two kidnappings. See Bolender v. State, 422 So.2d 833 (Fla. 1982); Stevens v. State, 419 So.2d 1058 (Fla. 1982); Routly v. State, 440 So.2d 1257 (Fla. 1983).

7. FLA. STAT. 921.141(5)(g)
WHETHER THE CAPITAL FELONY WAS COMMITTED TO DISRUPT OR HINDER THE LAWFUL EXERCISE OF ANY GOVERNMENTAL FUNCTION OR THE ENFORCEMENT OF LAWS.

This aggravating element was not present. The jury was not instructed as to this aggravating circumstance.

8. FLA. STAT. 921.141(5)(h)
WHETHER THE MURDER WAS ESPECIALLY HEINOUS, ATROCIOUS, AND CRUEL.

The state urges the court to give weight to the fact that Charles Flynn, Jr. suffered for approximately an hour before dying. This is not a permitted reason for finding this aggravating circumstance in most homicides resulting from gun shot wounds. See Teffeteller v. State, 439 So.2d 840 (Fla. 1983), where the victim suffered hours following a shot gun wound to the stomach. In Miller v. State, 476 So.2d 172 (Fla. 1985), the Supreme Court explained that application of this aggravating circumstance turns on the intent of the murderer, and not on the time a victim lingers while suffering which is "pure fortuity."

The victim was parked in a public place late at night with his girlfriend when he was approached by the defendant who was pointing a pistol at him. He knew immediately of his likely peril as he pleaded with the defendant, "Hold on, wait a minute, man, put it down." Ignoring his pleas the defendant forced him to his knees and then tied his hands behind his back. Money was removed from his wallet and he was forced into his own truck and driven through the darkness to an isolated citrus grove. He suffered agony from this point, knowing he was likely to die soon. He observed the defendant assault his girlfriend and heard him say, "You are a slut and you'll do what I say or I'll blow your brains out." Aware of his likely fate he attempted to save himself and rescue his girlfriend. He was successful in the latter.

The state has proved the existence of this aggravating circumstance beyond a reasonable doubt.

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9. FLA. STAT. 921.141(5)(i)
WHETHER THE MURDER WAS COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

This aggravating element was not present. The jury was not instructed as to this aggravating circumstance.

MITIGATING CIRCUMSTANCES - FLA. STAT. 921.141(6)

1. FLA. STAT. 921.141(6)(a)
WHETHER DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY.

This mitigating circumstance was not present. The jury was not instructed as to this mitigating circumstance.

2. FLA. STAT. 921.141(6)(b)
WHETHER THE CAPITAL FELONY WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

This mitigating circumstance was not present. The jury was not instructed as to this mitigating circumstance.

3. FLA. STAT. 921.141(6)(c)
WHETHER THE VICTIM WAS A PARTICIPANT IN THE DEFENDANT'S CONDUCT OR CONSENTED TO THE ACT.

This mitigating circumstance was not present. The jury was not instructed as to this mitigating circumstance.

4. FLA. STAT. 921.141(6)(d)
WHETHER THE DEFENDANT WAS AN ACCOMPLICE IN THE MURDER COMMITTED BY ANOTHER PERSON AND HIS PARTICIPATION WAS RELATIVELY MINOR.

This mitigating circumstance was not present. The jury was not instructed as to this mitigating circumstance.

5. FLA. STAT. 921.141(6)(e)
WHETHER THE DEFENDANT ACTED UNDER EXTREME DURESS OR UNDER THE SUBSTANTIAL DOMINION OF ANOTHER PERSON.

This mitigating factor is usually applied to negate the

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aggravating factor of "cold, calculated, premeditated, and without moral justification." In the instant case that aggravating factor does not exist. As used in this statute, "duress refers to external provocation such as imprisonment or the use of force or threats." Toole v. State, 479 So.2d 731, 734 (Fla. 1985).

In a heroic effort to save his girlfriend, Charles Flynn fired at the defendant. He did not, however, instigate the defendant's criminal episode which culminated in his own death. See generally Wilson v. State, 436 So.2d 908 (Fla. 1983). The defendant failed to establish the existence of this statutory mitigating circumstance by a preponderance of the evidence.

6. FLA. STAT. 921.141(6)(f)
WHETHER THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED.

This mitigating circumstance was not present. The jury was not instructed as to this mitigating circumstance.

7. FLA. STAT. 921.141(6)(g)
THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME.

This mitigating circumstance was not present. The jury was not instructed as to this mitigating circumstance.

NONSTATUTORY MITIGATING CIRCUMSTANCES

The defendant is allowed great latitude in presenting evidence which he feels constitutes nonstatutory mitigating factors. The court should consider these nonstatutory mitigating circumstances. See Lockett v. Ohio, 438 U.S. 586 (1978); Eddings v. Oklahoma, 455 U.S. 104 (1982); Cooper v. Dugger, 526 So.2d 900 (Fla. 1988). The defendant argues that the court should find the following nonstatutory mitigating circumstances present in this case, and they should be given weight by the court: 1) Saving the life of another; 2) Murder of mother, suicide of father; 3) Age at the

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time of commission of previous felony of violence; youthful offender treatment; and 4) The defendant is a father. The court has given the following consideration to these arguments.

1. SAVING THE LIFE OF ANOTHER

The defendant established by a preponderance of the evidence that the defendant assisted his friend Damon Jones by pulling him from a lake. Mr. Jones could not swim and credits the defendant with saving his life. There is no evidence that the defendant's action placed his own safety in jeopardy. The court does not consider this a mitigating circumstance.

2. MURDER OF MOTHER, SUICIDE OF FATHER

The defendant established by a preponderance of the evidence that when he was a teenager his father killed his mother by shooting her with a handgun, and then committed suicide by shooting himself. This occurred while the defendant was serving a prison term for robbery. There was no evidence presented as to the psychological effect this circumstance had upon the defendant who was thirty-one years old at the time he murdered Charles Flynn, Jr. The court does not consider these facts a mitigating circumstance.

3. AGE AT THE TIME OF COMMISSION OF PREVIOUS FELONY OF VIOLENCE; YOUTHFUL OFFENDER TREATMENT

The defendant established by a preponderance of the evidence that the defendant was eighteen years old at the time he committed the crime of robbery in the State of New York. (The offense occurred April 18, 1976, and the defendant's date of birth is September 11, 1957.) The defendant also established that he was treated as a youthful offender by the State of New York. The court does not consider this a mitigating circumstance.

4. DEFENDANT IS A FATHER

The defendant is the biological father of a son between five and six years old. The defendant has not lived with his son since the child was just over one year. Since then he has taken the child to the park and "a number of times" spent the night with him. The court has considered the defendant's relationship with his son which was described by the

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defendant's sister as loving. The court, however, does not consider these facts to constitute a mitigating circumstance.

SUMMARY

After weighing the evidence the court finds four aggravating circumstances to exist. The court further finds that no statutory mitigating circumstances exist nor any nonstatutory mitigating circumstances. Aggravating circumstances are found to substantially outweigh mitigating circumstances. In reaching this conclusion the court has not used the score card approach proscribed in Dixon v. State, 283 So.2d 1 (Fla. 1973).

SENTENCE

Crosley Alexander Green, the court having given you an opportunity to be heard and show legal cause why judgment and sentence should not now be imposed and to offer matters in mitigation, and no legal cause having been shown to preclude imposition of judgment and sentence, you are hereby

ADJUDGED guilty of the crime of First Degree Murder for the unlawful killing of Charles Flynn, Jr., you are,

THEREFORE, sentenced to be put to death in the manner and means provided by law (Section 922.10, Florida Statutes, 1987). May God have mercy on your soul.

IT IS YOUR RIGHT TO APPEAL WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS PROCEEDING HELD IN THIS COURT. YOU ARE ENTITLED TO

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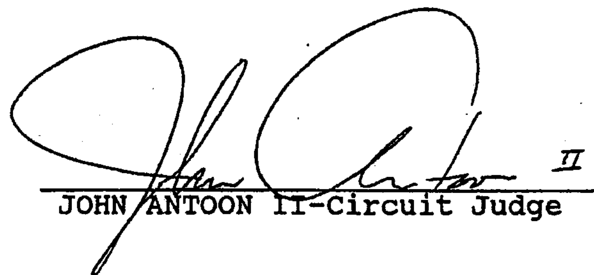
THE ASSISTANCE OF AN ATTORNEY IN PREPARING AND FILING YOUR APPEAL. UPON A SHOWING THAT YOU ARE ENTITLED TO AN ATTORNEY AT THE EXPENSE OF THE STATE, ONE WILL BE APPOINTED FOR YOU.

DONE AND ORDERED in Melbourne, Brevard County, Florida, this 8th day of FEBRUARY, 1991.



JOHN ANTOON II-Circuit Judge

Copies furnished to:

Office of the State Attorney
John R. Parker, Defense Attorney

RETURN TO: CRIMINAL LAW DEPARTMENT
R.C. WINSTEAD, JR.
CLERK OF CIRCUIT COURT

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CFN 2009163704, OR BK 6019 Page 1762, Recorded 09/01/2009 at 05:04 PM, Scott Ellis, Clerk of Courts, Brevard County

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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

____ Probation Violator ____ Community Control Violator ____ Retrial _XX_ Resentence

STATE OF FLORIDA

vs

CROSLEY ALEXANDER GREEN

Case Number 05-1989-CF-004942-AXXX-XX

Filed in Open Court, on August 31, 2009 4 18 pm

D Moon, Deputy Clerk

JUDGMENT

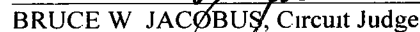
Court was opened with the Honorable BRUCE W JACOBUS presiding, and in attendance State Attorney ROBERT W HOLMES, Trial Clerk D Moon, Court Reporter KING REPORTING HARRISON, Y The Defendant, CROSLEY ALEXANDER GREEN, and said Defendant having previously entered a plea on September 5, 1990, to the following crime(s)

OBTS Number(s)			
Count	**Crime**	**Offense Statute Number**	**Degree**
1	MURDER 1ST DEGREE DURING COMMISSION OF FELONY	782 04(1a2)	FCAP
2	ROBBERY WITH FIREARM OR DEADLY WEAPON	812 13(2a)	F1
3	ROBBERY WITH FIREARM OR DEADLY WEAPON	812 13(2a)	F1
4	EXP KIDNAPPING	787 01	F1
5	EXP KIDNAPPING	787 01	F1

_X_ And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens

_X_ the prior ADJUDICATION OF GUILT in this case is confirmed

DONE AND ORDERED in open court at Brevard County, Florida, on August 31, 2009



BRUCE W JACOBUS, Circuit Judge

Case # 05-1989-CF-004942-AXXX-XX
Document Page # 758

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DISTRIBUTION ORIGINAL-COURT FILE [ ] DEFENDANT [ ] PROBATION & PAROLE [ ] SHERIFF [ ] DEFENSE ATTORNEY/PD [ ] STATE ATTORNEY [ ] DEPT OF CORRECTIONS(2)

758-77

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PTY D-1
Event Code 5637

[X] IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA ☐ IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA		CASE NUMBER 05 -1989-CF- 4942 A XXX-XX
DIVISION ☐ CIVIL [X] CRIMINAL ☐ TRAFFIC	FINGERPRINTS OF DEFENDANT OBTS NUMBER ____________	FILED IN OPEN COURT This _____ day of __________, 20____, at ________M CLERK OF COURTS BY __________________DC
PLAINTIFF STATE OF FLORIDA vs Crosley Alexander Green		

1 R Thumb	2 R Index	3 R Middle	4 R Ring	5 R Little
6 L Thumb	7 L Index	8 L Middle	9 L Ring	10 L Little

Fingerprints taken by Robert Morton 184 (name) Deputy (title)

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, Crosley Alexander Green, and that they were placed thereon by the defendant in my presence in open court this date

DONE AND ORDERED BREVARD COUNTY, FLORIDA	[signature] JUDGE	DATE 8/31/09

LAW 148
Rev 12/2006

PAGE ____ OF ____

Reserved for Recording

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA

vs

CROSLEY ALEXANDER GREEN

Case Number 05-1989-CF-004942-AXXX-XX

OBTS Number(s)

SENTENCE

The Defendant, CROSLEY ALEXANDER GREEN, 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

It is the sentence of the Court that

(as to Count _1_)

_X_ and the Court having previously entered a judgment in this case on February 8, 1991, now resentences the Defendant

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

_X_ And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens

To be imprisoned (Check one, unmarked sections are inapplicable)

_X_ For a term of natural life

(as to Count _2_)

_X_ and the Court having previously entered a judgment in this case on February 8, 1991, now resentences the Defendant

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

_X_ And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens

To be imprisoned (Check one, unmarked sections are inapplicable)

_X_ For a term of seventeen (17) years

Defendant CROSLEY ALEXANDER GREEN
OBTS Number(s)

Case Number 05-1989-CF-004942-AXXX-XX

(as to Count 3)

X and the Court having previously entered a judgment in this case on February 8, 1991, now resentences the Defendant

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

X And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens

To be imprisoned (Check one, unmarked sections are inapplicable)

X For a term of seventeen (17) years

(as to Count 4)

X and the Court having previously entered a judgment in this case on February 8, 1991, now resentences the Defendant

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

X And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens

To be imprisoned (Check one, unmarked sections are inapplicable)

X For a term of seventeen (17) years

(as to Count 5)

X and the Court having previously entered a judgment in this case on February 8, 1991, now resentences the Defendant

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

X And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens

To be imprisoned (Check one, unmarked sections are inapplicable)

X For a term of seventeen (17) years

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA

vs

CROSLEY ALEXANDER GREEN

Case Number 05-1989-CF-004942-AXXX-XX

OBTS Number(s)

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed

(as to Count 2)

Other Provisions

Original Jail Credit X It is further ordered that the defendant be allowed a total of 616 days as credit for time incarcerated before imposition of this sentence

Related Sentences X Sentence shall run concurrent with COUNTS 2 THROUGH 5
Sentence shall run consecutive to, count 1

(as to Count 3)

Other Provisions

Original Jail Credit X It is further ordered that the defendant be allowed a total of 616 days as credit for time incarcerated before imposition of this sentence

Related Sentences X Sentence shall run concurrent with COUNTS 2 THROUGH 5
Sentence shall run consecutive to, count 1

(as to Count 4)

Other Provisions

Original Jail Credit X It is further ordered that the defendant be allowed a total of 616 days as credit for time incarcerated before imposition of this sentence

Related Sentences X Sentence shall run concurrent with COUNTS 2 THROUGH 5
Sentence shall run consecutive to, count 1

(as to Count 5)

Other Provisions

Original Jail Credit X It is further ordered that the defendant be allowed a total of 616 days as credit for time incarcerated before imposition of this sentence

Related Sentences X Sentence shall run concurrent with COUNTS 2 THROUGH 5
Sentence shall run consecutive to, count 1

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CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA

Case Number 05-1989-CF-004942-AXXX-XX

vs

CROSLEY ALEXANDER GREEN

SIGNATURE PAGE

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

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

In imposing the above sentence, the Court further recommends
*(Items marked with *(COP) *(COCC) and *(COS) are Conditions of Probation Community Control and Condition of Suspension)*

(as to Count 1)

General

DEFENDANT IS TO BE TRANSPORTED BACK TO UNION CORRECTIONAL AS SOON AS POSSIBLE
KEITH HARRISON, ROBERT RHOADS, STACIE LIEBERMAN APPEARED WITH THE DEFENDANT PRO HAC VICE, LOCAL COUNSEL D TODD DOSS ALSO PRESENT

Confinement

IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL BE REQUIRED TO SERVE NO LESS THAN 25 YEAR BEFORE BECOMING ELIGIBLE FOR PAROLE IN ACCORDANCE WITH THE PROVISIONS OF F S 775 082 (1)
SENTENCE NUNC PRO TUNC TO 02-08-1991

THE COURT HEREBY ORDERS THE DEFENDANT remanded to the Brevard County Detention Center

DONE AND ORDERED at Brevard County, Florida, on August 31, 2009

BRUCE W JACOBUS, Circuit Judge

I acknowledge receipt of a certified copy of this Order, and the conditions have been explained to me I will immediately report to the Probation and Parole Office for further instructions

Date

Probationer/Community Controllee

INSTRUCTED BY

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CROSLEY ALEXANDER GREEN,

Petitioner,

v. Case No: 6:14-cv-330-RBD-GJK

SECRETARY, DEPARTMENT OF CORRECTIONS and ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.

ORDER

This cause is before the Court on Petitioner's Motions for the Immediate Release of Crosley Green ("Motions for Immediate Release," Doc. Nos. 97, 101).[1] Respondents have filed Responses ("Responses," Doc. Nos. 106, 107).[2] Petitioner requests that "the Court . . . reweigh the *Hilton*[3] factors in light of his current, changed, circumstances, and to release him from continued unconstitutional incarceration." (Doc. 97 at 27).

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[1] Doc. 97 is the redacted version of the Motion for Immediate Release, while Doc. 101 is the unredacted version of the Motion for Immediate Release filed under seal.

[2] Doc. 107 is the redacted version of the Response, while Doc. 106 is the unredacted version of the Response filed under seal.

[3] *Hilton v. Braunskill*, 481 U.S. 770 (1987).

I. PROCEDURAL BACKGROUND

On July 20, 2018, the Court granted in part and denied in part Petitioner's Amended Petition for Writ of Habeas Corpus. (Doc. 70.) Specifically, the Court conditionally granted the writ of habeas corpus as to Issue One of Claim One, within ninety days from the date of the Order, unless the State of Florida initiated new trial proceedings in state court consistent with the law. All remaining claims were found to be without merit, and habeas relief was denied with prejudice as to those claims. The parties appealed to the Eleventh Circuit Court of Appeals ("Eleventh Circuit"), and the appeal remains pending. (Doc. Nos. 77, 81.) On September 5, 2018, the Court granted Respondents' Motion for Stay Pending Appeal. (Doc. 83.) On January 7, 2019, the Court denied Petitioner's Motion for Release Pending Appeal. (Doc. 87.)

Due to COVID-19, Petitioner moved in the Eleventh Circuit for immediate release on August 7, 2020. On September 14, 2020, the Eleventh Circuit denied the motion without prejudice to Petitioner moving in this Court for immediate release. Petitioner failed to file a motion for immediate release in this Court, and, on March 3, 2021, the Court entered an Order directing Petitioner to file a status report regarding his incarceration during COVID-19 and whether he intended to file a motion for immediate release in this Court. (Doc. 93.) Petitioner filed a Status

Report on March 17, 2021 (Doc. 94), and Respondents filed an Objection on March 18, 2021. (Doc. 95.)

II. Analysis

Petitioner states that the "reasons stated by the Court in January 2019 for keeping Mr. Green confined no longer exist and are overshadowed by the subsequent wildfire spread of COVID-19 throughout the country—and in Mr. Green's facility with no certain end in sight." (Doc. 101 at 8.) Petitioner asserts that he is at increased risk of dying from COVID-19 because of his age (63 years old), recent exposure to tuberculosis (for which he is undergoing treatment), history of high blood pressure, and race (African-American). (*Id*. at 7, 16.) Petitioner requests that the Court "grant his release from forcible exposure to COVID-19 pending the conclusion of the State's appeal (and potential retrial) . . . ." (*Id*. at 8.) Petitioner "is not seeking to lift the stay of the 90-day re-initiation order, and this Court can sustain that part of the stay order while at the same time releasing Mr. Green." (*Id*.)

Respondents counter that "the institution where Green is housed currently has no active cases of COVID-19 and the mortality rate of inmates in the Florida Department of Corrections remains less than that for the State of Florida at large." (Doc. 106 at 6.) According to Respondents,

> even with the TB re-exposure diagnosis, for which he is being treated, (his race, age and hypertension would also, presumably, make him

> more susceptible to COVID-19 outside of prison, too), Green is much less likely to be exposed to COVID-19 at Calhoun Correctional Institution where he is incarcerated (especially since there are no active cases at Calhoun Correctional Institution) than the State of Florida at large if he were released.

(*Id*. at 8). Respondents assert that Petitioner "has failed to demonstrate special reasons to justify his immediate release, *i.e.*, a substantial change in circumstances or irreparable harm, based upon COVID-19." (*Id*.)

There is a presumption of release pending appeal where a petitioner has been granted habeas relief. *See Hilton v. Braunskill*, 481 U.S. 770, 774 (1987). However, this presumption can be overcome if the traditional factors regulating the issuance of a stay weigh in favor of granting a stay. These factors include the following: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Id*. at 776. However, "[a] court is to consider three additional traditional stay factors if the habeas petitioner were to be released: (1) the possibility of flight; (2) the risk of danger to the public; and (3) the state's interest in continuing custody and rehabilitation of the petitioner while the case is pending appeal." *Kelley v.*

Singletary, 265 F. Supp. 2d 1305, 1307 (S.D. Fla. 2003) (citing to *Hilton*, 481 U.S. at 777).[4]

The Court determines that, because of the impact of the COVID-19 pandemic and the length of time to resolve Petitioner's appeal, the *Hilton* analysis of whether Petitioner should be released during the pendency of his appeal should be revisited.

As to the first factor, although Respondents have raised several debatable issues, they have failed to show a strong likelihood of success on appeal.

Next, with regard to the second factor, at this stage of the proceedings, there is no indication that Respondents will be irreparably injured in the event of Petitioner's release. Petitioner would be substantially injured since the Court has already reversed his conviction and ordered a new trial. Further, a "prisoner whose conviction is reversed by this Court need not go free if he is in fact guilty, for [the state] may indict and try him again by the procedure which conforms to

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[4] In addition, Federal Rule of Appellate Procedure 23(d) provides that an initial order "governing the prisoner's custody or release . . . continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody [or] release . . . is issued." The Court finds that it has authority to rule on the pending motion whether it is considered an initial decision on the merits of Petitioner's custody or an independent order under Rule 23(d). *See Myers v. Superintendent, Indiana State Prison*, No. 1:16-cv-02023-JRS-DML, 2020 WL 2803904, at *3 (S.D. Ind. May 29, 2020).

constitutional requirements." *Hughes v. Vannoy*, No. CV 16-00770-BAJ-RLB, 2020 WL 2570032, at *2 (M.D. La. May 21, 2020) (citation omitted) (quotation omitted).

The third factor weighs in favor of release. Petitioner has been incarcerated over thirty years and has been described as a "model prisoner" by the Warden of Calhoun Correctional Institution ("Calhoun"), where he is currently incarcerated. (Doc. 97-1.) In addition, the COVID-19 pandemic has further amplified Petitioner's interest in release because of his age and medical issues. Although at present there does not appear to be an outbreak of the virus at Calhoun, that facility has had COVID-19 related deaths in the past. (Doc. 106 at 7.)

As to the fourth factor, the Court concludes that Respondents have failed to establish that Petitioner poses any risk to the public. "While there is no overstating the significance of the crimes [Petitioner] was convicted of, there is also no discounting the impact of [over thirty years] in prison on who [Petitioner] is today." *Waiters v. Lee*, 168 F. Supp. 3d 447, 453 (E.D.N.Y. 2016). As noted above, Petitioner has been described as a model prisoner by the Warden of Calhoun. Additionally, the public has a strong interest in the release of a prisoner whom the Court has found to be incarcerated in violation of the Constitution. The Court finds that the public interest weighs is favor of granting release pending appeal.

As to the three additional stay factors, Respondents have not offered any evidence to suggest that Petitioner is a flight risk or that Petitioner poses a danger

to the public. Petitioner is 63 years old and has high blood pressure and hypertension. Finally, the public has little interest in Petitioner's continued custody since he poses no danger to public safety and is not a flight risk. Any potential risk is sufficiently mitigated by the imposition of supervision and other conditions of release such as home confinement and location monitoring, imposed pursuant to the Court's authority under Federal Rule of Appellate Procedure 23.[5] Therefore, the State has little to gain from the continued incarceration of Petitioner, whom the Court has already determined is in custody in violation of the Constitution.

In sum, after considering each of the *Hilton* factors and all other relevant factor, the Court concludes that they weigh in favor of granting Petitioner's release during the pendency of his appeal subject to conditions.

III. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Petitioner's Motions for the Immediate Release of Crosley Green (Doc. Nos. 97, 101) are **GRANTED**.

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[5] The Court notes it has authority under Rule 23 to impose conditions of release over and above the possible imposition of a surety. *See O'Brien v. O'Laughlin*, 557 U.S. 1301, 1303 (2009); *Young v. Hutchins*, No. 2:12-cv-00524-RFB-NJK, 2021 WL 201477, *13 n.11 (D. Nev. Jan. 20, 2021); *Myers v. Superintendent, Ind. State Prison*, 1:16-cv-02023-JRS-DML, 2020 WL 2803904, *7–8 (S.D. Ind. May 29, 2020).

2. Petitioner's counsel shall notify the Warden of Calhoun of the issuance of this Order so that its provisions can be put into effect as quickly as possible.

3. Petitioner Crosley Green is to be released from custody into the custody of his brother-in-law, David Peterkin, during the pendency of the appeal with the Eleventh Circuit.

4. Petitioner shall proceed immediately to Mr. Peterkin's residence in Titusville, Florida, where he shall reside during the pendency of the appeal unless otherwise ordered by the Court.

5. Petitioner will be supervised by the United States Probation Office for the Middle District of Florida. Petitioner must make contact with the U.S. Probation Office for the Middle District of Florida Orlando Division, 401 W. Central Blvd., Suite 1400, Orlando Florida, within **72 hours** of his release from the Florida Department of Correction facility where he is currently housed. He shall continue to report to the Probation Office periodically as directed by the Court or the Probation Office.

6. During his release Petitioner shall participate in the Home Detention program until released by this Court. During this time, Petitioner will remain at the residence of his brother-in-law, Mr. Peterkin, except for

medical appointments, religious activities, essential shopping, employment and other activities approved in advance by the probation office. Petitioner will be subject to the standard conditions of Home Detention adopted for use in the Middle District of Florida, which may include the requirement to wear an electronic monitoring device and to follow electronic monitoring procedures specified by the probation office. Further, Petitioner shall be required to contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office based on his ability to pay.

7. Petitioner shall not commit any federal, state, or local crime.

8. Petitioner shall not unlawfully use or possess a controlled substance. The Court may subsequently order periodic drug testing.

9. Petitioner shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

10. Petitioner shall appear in court as required and surrender to serve any sentence, as ordered by a court.

11. Petitioner shall not obtain a passport.

12. Petitioner shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the Probation Office.

13. Petitioner shall permit a Probation Officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in the plain view of the Probation Officer.

14. Petitioner shall notify the Probation Office within 72 hours of being arrested or questioned by a law enforcement officer.

15. The stay pending Respondents' appeal shall remain in effect to the extent that the Court ordered a retrial within ninety days from the date of its Order of July 27, 2018 (Doc. 74).

DONE and **ORDERED** in Orlando, Florida on April 6, 2021.

Copies furnished to:

Counsel of Record
Warden of the Calhoun Correctional Institution,
Florida Department of Corrections

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CROSLEY ALEXANDER GREEN,

Petitioner,

v. Case No: 6:14-cv-330-RBD-GJK

SECRETARY, DEPARTMENT OF CORRECTIONS and ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.

ORDER

This cause is before the Court upon Respondents' Memorandum of Law (Doc. 123) and Petitioner's Memorandum of Law In Support of Continuing the Conditions of Release (Doc. 125).

On July 27, 2018, the Court entered an Amended Order (Doc. 74) granting in part and denying in part the Amended Petition for Writ of Habeas Corpus (Doc. 10.) Specifically, the Court conditionally granted the writ of habeas corpus as to Issue One of Claim One unless the State of Florida initiated new trial proceedings in state court consistent with the law within ninety days from the date of the Amended Order. All remaining claims were found to be without merit, and habeas relief was denied with prejudice as to those claims.

The parties appealed to the Eleventh Circuit Court of Appeals ("Eleventh Circuit"), and, on September 5, 2018, the Court granted Respondents' Motion for Stay Pending Appeal. (Doc. 83.) On January 7, 2019, the Court denied Petitioner's Motion for Release Pending Appeal. (Doc. 87.)

Petitioner later filed Motions for the Immediate Release of Crosley Green (Doc. Nos. 97, 101), and, on April 6, 2021, the Court entered an Order (Doc. 110) granting the motions and releasing Petitioner from custody the Florida Department of Corrections into the custody of his brother-in-law during the pendency of the appeal with the Eleventh Circuit.

On March 14, 2022, the Eleventh Circuit entered an opinion reversing this Court's granting of habeas relief and, on Petitioner's cross-appeal, affirming the denial of relief. (Doc. 115). The Eleventh Circuit issued mandate on March 8, 2023. (Doc. 124).[1] The Court then entered an Order (Doc. 122) on March 1, 2023, directing the parties to each file a memorandum of law regarding whether the Court should modify or rescind it order granting Petitioner's release.

The Court's Order (Doc. 110) of April 6, 2021, allowed for Petitioner's release "during the pendency of the appeal with the Eleventh Circuit." (*Id*. at 8.) The Eleventh Circuit overturned the Court's order granting habeas relief and issued

[1] The Supreme Court of the United States denied Petitioner's petition for a writ of certiorari on February 27, 2023. (Doc. 121).

mandate. The Supreme Court of the United States denied the petition for a writ of certiorari. As a result, there is no further lawful basis upon which to continue Petitioner's release.

Accordingly, it is **ORDERED** as follows;

1. As there is no further basis upon which to continue Petitioner's release, the Court's order granting Petitioner's release shall be rescinded.

2. Within fourteen (14) days from the date of this Order, Petitioner shall surrender himself to the Florida Department of Corrections facility designated by the Florida Attorney General to complete the remainder of his sentence.

DONE and **ORDERED** in Orlando, Florida on April 3, 2023.

Copies furnished to:

Counsel of Record

Martin, Virginia

From: David Mack <mackparole@aol.com>
Sent: Monday, August 14, 2023 11:53 AM
To: Martin, Virginia; Thomas, Jeane; Harrison, Keith; Morgan, Drake; Galluzzo, Vince
Cc: DAVID MACK; DAVID MACK
Subject: Fw: CROSLEY GREEN#902925

External Email

FYI,

----- Forwarded Message -----
From: FCORLegal <fcorlegal@fcor.state.fl.us>
To: David Mack <mackparole@aol.com>
Sent: Wednesday, June 28, 2023 at 08:39:07 AM EDT
Subject: RE: CROSLEY GREEN#902925

Good morning.

The Commission is in receipt of your public records request.

Thank you,

Public Records Unit

Office of the General Counsel

Florida Commission on Offender Review

4070 Esplanade Way

Tallahassee, Florida 32399

P: (850) 488-4460

E: fcorlegal@fcor.state.fl.us

From: David Mack <mackparole@aol.com>
Sent: Tuesday, June 27, 2023 7:09 PM
To: FCOR Legal Services <LegalServices@fcor.state.fl.us>

Cc: DAVID MACK <mackparole@aol.com>; DAVID MACK <mack728276@gmail.com>
Subject: CROSLEY GREEN#902925

Good morning. I hope all is well. I want to request the case material for the above-referenced individual:

1. The notification letter sent to Mr. Green informed him of the results of his parole hearing held on September 23, 2015. The Commission Action was certified on September 29, 2015.

2. 2015 Commission Investigator Initial Parole Interview Report and PPRD calculation attachments.

Thank you for your assistance in this matter.

David Mack

Parole Specialist

1100 East Park Avenue

Tallahassee, Florida 32301

phone: 850.284.8915

FLORIDA COMMISSION ON OFFENDER REVIEW
OFFICE OF THE GENERAL COUNSEL
PUBLIC RECORDS UNIT

4070 Esplanade Way
Tallahassee, Florida 32399-2450
P: (850) 488-4460
E: FCORLegal@fcor.state.fl.us

DATE: June 28, 2023

TO:
David Mack
Parole Specialist

SHIP TO:
David Mack
Parole Specialist
E: mackparole@aol.com

SUBJECT: FCOR, PRR, CROSLEY GREEN [DC 902925]

☒On June 27, 2023, the Commission received your emailed Public records request, wherein you request "**1.** The notification letter sent to Mr. Green informed him of the results of his parole hearing held on September 23, 2015. The Commission Action was certified on September 29, 2015. **2.** 2015 Commission Investigator Initial Parole Interview Report and PPRD calculation attachments," related to inmate Crosley Green [DC 902925].

☒The Commission has identified 12 pages of records responsive to your request.

☒The Commission has elected to provide you these records free of charge, as a courtesy. The provision of these records free of charge does not constitute a waiver of the Commission's authority to charge statutorily permissible fees for additional or future public records requests.

All non-confidential and non-exempt responsive records are included here. The provision of these records here completes the Commission's obligations pursuant to your June 27, 2023, public records request.

EXEMPTIONS

The following information has been withheld or redacted from the responsive records:

☒	Medical, psychological, and dental records, without a properly executed DC4-711B Consent for Release form. ss. 945.10(1)(a), 456.057(7)(a), Fla. Stat., and 45 C.F.R. § 164.502.
☐	HIV/AIDS testing information and/or substance abuse treatment records, without a properly executed DC4-711B Consent for Release form. ss. 381.004, 397.501, 397.752, Fla. Stat., and 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2.
☐	Biometric identification information, including fingerprints. s. 119.071(5)(g), Fla. Stat.
☐	Medical information pertaining to a prospective, current, or former officer or employee. s. 119.071(4)(b), Fla. Stat.

☐	Social security numbers. s. 119.071(5)(a), Fla. Stat.
☐	Bank account numbers or debit, charge, or credit card numbers. s. 119.071(5)(b), Fla. Stat.
☐	Records relating to an allegation of employment discrimination when the allege victim chooses not to file a complaint and requests that records of the complaint remain confidential. s. 119.071(2)(g), Fla. Stat.
☐	Preplea, pretrial intervention, pre-sentence or post-sentence investigations. s. 945.10(1)(b), Fla. Stat.
☐	Information regarding a person in the federal witness protection program. s. 945.10(1)(c), Fla. Stat.
☐	Records developed or received by any state entity pursuant to a Board of Executive Clemency investigation. s. 14.28, Fla. Stat.
☒	Information regarding a victim's statement or identity. ss. 945.10(1)(f), 119.071(2)(j), Fla. Stat. Article I, Section 16(b)(5), Fla. Const.
☐	Information, interviews, reports, statement, memoranda, and drug test results, written or otherwise, received or produced as a result of an employee/applicant drug-testing program preformed in accordance with the Drug Free Workplace Act. s. 112.0455(11), Fla. Stat.
☐	FCIC II/NCIC and criminal justice information. s. 945.053, Fla. Stat.
☐	Active criminal investigation or criminal intelligence information. s. 119.071(2)(c), Fla. Stat.
☐	Educational records; including personally identifiable records and reports of a student, and any personal information contained therein. ss. 1002.22(2), 1002.221, Fla. Stat.
☐	Personal identifying information contained in records documenting an act of domestic violence or sexual violence that is submitted to the department by an employee or a written request for leave or time sheet reflecting a request submitted by a department employee pursuant to s. 741.313, Fla. Stat. s. 741.313(7), Fla. Stat.
☐	A record that was prepared by an agency attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings. s. 119.071(1)(d), Fla. Stat.
☐	Information, which if released, would jeopardize a person's safety. s. 945.10(1)(e), Fla. Stat.
☐	Birth certificates, birth records, or certificates of live birth. ss. 382.012(5), 382.025(1), 382.025(3), 382.025(4), Fla. Stat.
☐	Juvenile criminal history records or data. ss. 943.053(3)(1), 985.04(1)(a), Fla. Stat.
☐	Data processing software obtained by an agency under a licensing agreement that prohibits the disclosure and which software is a trade secret, as defined in s. 812.081, Fla. Stat., and agency-produced data processing software that is sensitive, is exempt from s. 119.071(1) and s. 24(a), Article I, of the state constitution.
☐	Other:

Filing # 90816970 E-Filed 06/10/2019 11:16:46 AM

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY FLORIDA

TAYLOR WELLS,
Petitioner,

v. Case No.: 2019 CA 001415

FLORIDA COMMISSION
ON OFFENDER REVIEW, et. al.
Respondent./

PETITION FOR WRIT OF MANDAMUS

Pursuant to Rule 1.630 of the Florida Rules of Civil Procedure, and Rule 9.100 of the Florida Rules of Appellate Procedure, Petitioner, Taylor Wells, respectfully moves this court for a writ of mandamus challenging the Florida Commission on Offender Review's (FCOR) computation of his presumptive parole release date (PPRD).

BASIS FOR INVOKING JURISDICTION

This court has jurisdiction to issue a writ of mandamus under Article V§5(b) of the Florida Constitution and Rule 9.030(c) of the Florida Rules of Appellate Procedure. Mandamus is proper remedy to challenge a PPRD set by FCOR. See

Johnson v. FPC, 841 So.2d 615, 617 (1DCA 2003) (Judicial review is available through the common law writs of mandamus, for review of PPRD's). The Florida Supreme Court has acknowledged that the proper method to seek review of a PPRD determination is a complaint or petition for writ of mandamus. See *Lewis v. FPC*, 112 So.3d 534 (1DCA 2013)

TIMELINESS OF PETITION

Under section 95.11(5)(f), Florida Statutes, a petition for writ of mandamus challenging a PPRD must be sought within one year after the agency action of the FCOR became final. See *Lewis*, 112 So.3d at 535.

EXHAUSTION OF REMEDIES

The initial decision of the FCOR setting Wells' Initial PPRD was signed on March 10, 2018. Within the 60 day window following that action, on May 4, 2018, through counsel, Wells filed a Request for Review of that decision. On June 13, 2018 the FCOR had a hearing thereon in Tallahassee. At that hearing FCOR decided not to change the Initial PPRD. The decision stating such was signed by FCOR on June 21, 2018. Then, on April 24, 2019, the FCOR held a hearing for Reconsideration of the Initial PPRD as a result of Wells receiving an amended judgment. The FCOR certified an amended final action sheet on May 2, 2019 which is the date the agency action became final. Thus, having exhausted all remedies, Wells now timely seeks mandamus review in this Court.

NATURE OF RELIEF SOUGHT

Wells requests the following relief from the Court, to include but not limited to having the FCOR: Rescind the inappropriately applied aggravators, set his PPRD to April 30, 2018, and begin the EPRD process.

STATEMENT OF THE CASE AND FACTS

1. On May 1, 1993 Wells was arrested in Brevard County Florida and charged with First degree murder for a Felony Murder committed by a codefendant.

2. Following trial, on August 16, 1994 Wells was sentenced to natural life with twenty-five years mandatory before becoming parole eligible.

3. In June 2017, Wells was awarded an additional 57 days of jail credit.

4. Since this changed his "TIME BEGINS" date, Wells notified the FCOR. In response, FCOR advanced his initial interview by two months.

5. Wells initial interview was conducted on December 1, 2017.

6. FCOR Investigator, Dale Nichols, who conducted Wells' initial interview, gave him a very favorable recommendation for a PPRD of May 30, 2018 (the month his 25-year-mandatory was completed).

7. The quorum meeting was held on February 22, 2018.

8. The quorum reached a decision on March 10, 2018 setting Wells' Total months for Incarceration at 960 months for a PPRD of April 30, 2073.

9. On May 4, 2018 Wells filed his Request for Review of the PPRD.

10. Wells identified the evidence and records supporting each issue and provided an appendix in support of his Request for Review.

11. On June 13, 2018 the FCOR had a hearing thereon in Tallahassee.

12. At that hearing the FCOR decided not to change the PPRD. The decision stating such was signed by the FCOR on June 21, 2018.

13. On February 14, 2019, Judge Lisa Davidson entered an Order to amend judgment reflecting count 1 as First Degree Felony Murder.

14. As directed, on March 18, 2019, the Clerk amended the judgment to state for count 1 that Wells was convicted of "FIRST DEGREE FELONY MURDER WITH FIREARM" under Florida Statutes §782.04(1a2d).

15. Based on the newly amended judgment, Wells filed with the FCOR a Request for Reconsideration of his initial PPRD.

16. At the hearing held on April 24, 2019, the FCOR agreed to strike from the first Action form aggravators #1 and #6, removing a total of 180 months.

17. The other aggravators were not changed and remain as listed in the first Commission Action Form.

18. On May 2, 2019, the FCOR certified Wells' PPRD to be April 30, 2058 in an amended Commission Action form which shows this new PPRD was calculated as follows:

Matrix Time Range: .... Set at 180 months

~~1. The scored offense involved the use of a firearm. Per the PSI .... 60 months~~
Deleted 4/24/2019

2. Multiple separate offense Case #93-6831 Ct. 3 & 4 Robbery with a Firearm. (180 per count) .... 360 months
3. Multiple separate offense Case #93-6831 Ct. 5 Attempted Robbery with a Firearm .... 120 months
4. Multiple separate offense Case #93-6831 Ct. 6 Conspiracy to Commit Burglary of a Dwelling while Armed. .... 60 months
5. In an attempt to conceal evidence, the inmate hid the firearm used in the instant offense, in a bag, behind a wall under the bathroom sink cabinet. Per the PSI. .... 60 months

~~6. The offense involved multiple victims. Per the PSI. .... 120 months~~
Deleted 4/24/2019

Total months for Incarceration 780 Months

19. Wells now seeks mandamus review in this Court.

REQUEST FOR JUDICIAL NOTICE

In accordance with §90.203, Florida Statutes (2018), Wells requests that this Court take Judicial Notice that his Present Offense of Conviction[1] is for the crime of "Felony Murder".

In support, Wells requests that this Court take Judicial Notice of the Order of the 18th Judicial Circuit Court, Brevard County, Florida, dated February 14, 2019 (App. 8-10) and the amended judgment dated March 18, 2019. (App. 11-24) Both

[1] Defined by Rule 23-21.002(36)

may be judicially noticed pursuant to §90.202(6) which pertains to the records of any court of this state.

In her Order, Judge Lisa Davidson directed the clerk to prepare an Amended Judgment reflecting Count 1 as First Degree Felony Murder. The Amended judgment now states for Count 1: FIRST DEGREE FELONY MURDER WITH FIREARM, §782.04(1a2d)

The computation of Wells' PPRD is contingent upon whether he was convicted of the crime of "Felony Murder". In July 2017 Rule 23-21.010(3) was amended to include a prohibition against aggravation for the underlying offenses in a Felony Murder conviction. (App. 74-77) The Rule now specifically states that for the underlying offenses in a Felony Murder conviction "the number of months assessed for these sentences shall be zero". And, despite the amendment of this rule, the FCOR assessed 480 months in aggravation for the three underlying offenses of Wells' Felony Murder conviction.

GROUNDS FOR RELIEF

> The FCOR abused its discretion when it assessed a total of 480 months in aggravation for counts 3, 4, and 5 which are the underlying offenses and necessary elements of the crime of Felony Murder.

As this Court has now Judicially Noticed, Wells' Present Offense of Conviction is for the crime of Felony Murder. Since the two counts of robbery and the single count of attempted robbery are the underlying offenses of that Felony Murder conviction, they are expressly precluded from being used to assess months in aggravation per Rule 23-21.010(3). The prohibition under that Rule for assessing any months for *consecutive* sentences for the underlying offenses in a Felony Murder subsumes the same prohibition for Wells' more lenient *concurrent* sentences.

Rule 23-21.010(3) was amended in July 2017. The stated purpose behind the amendment is found in the Notice of Proposed Rule dated September 28, 2016: "*...clarification of the use of underlying offenses in calculation of an outside the matrix time range felony murder case.*" (App. 74) The pivotal aspect here is that the underlying offenses are for Felony Murder, not whether they are *consecutive* or *concurrent*. The reason for this is that the underlying offenses are *elements* of the crime of Felony Murder.

In accordance with Rule 23-21.010(2)(a), "Any element of the crime" shall not be used as an aggravating factor. The two counts of robbery and the single

count of attempted robbery are *elements* of the crime of Felony Murder and therefore precluded from being used to assess months in aggravation.

Wells' Present Offense of Conviction (App.11) is for First Degree Felony Murder per 782.04(1)(a)2d, Fla. Stat. (1993) and specifies both robbery and attempted robbery are *elements* of the crime:

> (1)(a) The unlawful killing of a human being:
> 2. When committed by a person engaged in the *perpetration* of, or in the *attempt to perpetrate* any:
> a...
> d. robbery

The actual instructions the Judge read to the jury (App. 59-73) specifically stated robbery and attempted robbery are *elements* of the crime of Felony Murder.

> Before you can find the defendant guilty in Count 1 of First Degree Felony Murder, the State must prove the following elements beyond a reasonable doubt:
>
> 1. David Codgen is dead.
>
> 2. The death occurred as a consequence of and while Taylor Glenn Wells was engaged in the commission of robbery or burglary.
>
> 3. That David Codgen was killed by a person other than Taylor Glenn Wells who was involved in the commission or attempt to commit robbery/burglary, but Taylor Glenn Wells was present and did knowingly aid, abet, counsel, hire or otherwise procure the commission of robbery or burglary.
>
> In order to convict of First Degree Murder, it is not necessary for the State to prove the defendant had a premeditated design or intent to kill.

The standard jury instructions amended in 1992, *Standard Jury Instructions – Criminal Cases No. 92-1*, 603 So.2d 1175, 1190(Fla. 1992), include Notes to Judge which states:

> 1. Define the crime alleged. If Burglary, also define crime that was the object of burglary.

Thus, because the two counts of robbery and the single count of attempted robbery are *elements* of the offense of Felony Murder, counts 3, 4, and 5 are precluded from use in aggravation. "Factors used in the definition of the present offense of conviction cannot be utilized to aggravate a prisoner's presumptive parole release date." See *Mattingly v. FPPC*, 417 So.2d 1163 (1DCA 1982).

Contrast is provided by the case of *Calloway v. FPPC*, 431 So.3d 300 (1DCA 1983). There, the court stated that the petitioner was properly aggravated for a robbery because "Robbery is not an element of the crime of second degree murder…" However, as demonstrated above, robbery is in fact an element of First Degree Felony Murder and therefore cannot be used in aggravation in Wells' case.

There is an intricate interplay between the offenses Wells was convicted of. Robbery and attempted robbery are both underlying offenses and elements of the Felony Murder conviction. They are also the object-crimes of the burglary conviction, which itself is another underlying offense of the Felony Murder conviction. Simply put, the robbery and attempted robbery convictions are factors of the burglary conviction and all three are factors of the Felony Murder conviction.

Wells submits that the FCOR's use of those convictions/factors as aggravating circumstances contravenes The Objective Parole Guidelines, §947.165, Fla. Stat. (2018) which states:

> Factors used in arriving at the salient factor score and the severity of offense behavior category shall not be applied as aggravating circumstances.

When calculating Wells' PPRD, the FCOR used the burglary conviction to score 1 point under the salient factor score (6), and used the Felony Murder conviction to determine the severity of offense behavior category level 6. (App. 3) The underlying offenses were contributing factors to those determinations. Therefore, §947.165 prohibits *any of the factors* thereby used from subsequently being applied as aggravating circumstances.

Commission Investigator, Dale Nichols, assessed zero months in aggravation because counts 3, 4 and 5 are the underlying offenses for the Felony Murder conviction (App. 3) Likewise, at the FCOR Hearing held on April 24, 2019, one of the Commissioners voted to strike all 480 months for the robbery and attempted robbery charges since they are the underlying offenses of the Felony Murder.

CONCLUSION

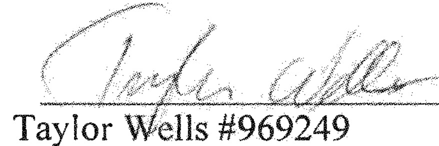
WHEREFORE, based on the foregoing, it was an abuse of discretion and not authorized for the FCOR to assess a total of 480 months in aggravation for counts 3, 4, and 5. Petitioner respectfully requests this Court order the FCOR to strike the inappropriately applied aggravators, reduce his PPRD by 480 months and grant any other relief he is entitled to. If the erroneous aggravators are eliminated, the correct PPRD would be April 30, 2018. Therefore it is further requested that this Court order the FCOR to begin the EPRD process for Petitioner.

COSTS FOR FILING PETITION

In accordance with *Florida Parole Commission, vs. Spaziano*, 48 So.3d 714 (Fla. 2010), inmate challenges to the FCOR's determination of an inmate's presumptive parole release date constitute collateral criminal proceedings for the purposes of §57.085(10), Florida Statutes which precludes imposition of a lien on the inmate's trust account to recover applicable filing fees. See also *Whited, v. FCOR,* 153 So.3d 324 (1 DCA 2014) (Filing fee for inmate's mandamus petition challenging a PPRD waived under §57.081, Fla. Stat.).

VERIFICATION BY WRITTEN DECLARATION PURSUANT TO §92.525, FLORIDA STATUTES (2017)

Under penalties of perjury, I declare that I have read the foregoing petition for writ of mandamus and that the facts stated in it are true.



Taylor Wells #969249

CERTIFICATE OF COMPLIANCE

I, David Falstadd, hereby certify that in compliance with Fl. R. App. P. 9.100(l), the foregoing petition for writ of mandamus is submitted in Times New Roman 14-point font.

/S/ DAVID B. FALSTADD
DAVID B. FALSTADD
5840 Red Bug Lake Rd. #335
Winter Springs, FL 32708-5011
Fla. Bar no. 722456
(407) 718-3793
falstadd@aol.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 10, 2019, the foregoing petition was e-filed with this Court and served by registered email on the counsel listed below.

Rana Wallace
Office of General Counsel
Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399-2450
ranawallace@fcor.state.fl.us

/S/ DAVID B. FALSTADD
DAVID B. FALSTADD
5840 Red Bug Lake Rd. #335
Winter Springs, FL 32708-5011
Fla. Bar no. 722456
(407) 718-3793
falstadd@aol.com
Counsel for Petitioner

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

TAYLOR WELLS, DC# 969249,

Plaintiff,

vs.

CASE NO.: 2019 CA 1415
Civil Division: ANGELA C. DEMPSEY

FLORIDA COMMISSION
ON OFFENDER REVIEW,

Defendant.
_______________________________/

ORDER GRANTING REMAND

This cause is before the Court on the Florida Commission on Offender Review's ("Commission"), Motion for Remand. Having considered the motion and the entire court file, the Court will grant the motion. It is therefore:

ORDERED AND ADJUDGED that the Commission is granted a period of forty-five (45) days in which to conduct a review and reconsideration of the PPRD establishment. Within ten (10) days following the finalization of any Commission action taken on the remand, the Commission shall file a Notice of Action, advising of the action taken.

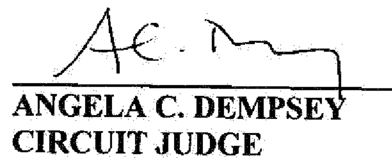
Within thirty (30) days of the filing of the Commission's Notice of Action, the Plaintiff shall have the opportunity to file a supplement or amendment to the Petition for Writ of Mandamus, if he chooses to do so.

If the Plaintiff does file a supplement or amendment, the Commission shall have a period of thirty (30) days after the filing of such supplement or amendment in which to file its response to the Petition for Writ of Mandamus and any supplement or amendment.

If the Plaintiff does not file a supplement or amendment, the Commission shall have a period of forty-five (45) days from filing of the Notice of Action to file its Response to the Petition for Writ of Mandamus.

The Plaintiff shall have a period of thirty (30) days after the filing of the Response in which to file a Reply, if he chooses to do so.

DONE AND ORDERED in in Leon County, Florida, on September 6, 2019.



ANGELA C. DEMPSEY
CIRCUIT JUDGE

Copies to:

MARK HIERS
Assistant General Counsel
Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, Florida 32399-2450

DAVID FALSTADD, Esquire,
(Attorney for Taylor Wells)
5840 Red Bug Lake Road #335
Winter Springs, Florida 32708-5011

Docket Placement Form

***Note: A Good Cause Statement is required when placing a case on the docket after the agenda is printed/copied. Matters of this nature also require the Chairman's approval.**

♦**Re**: **WELLS, TAYLOR** ♦**DC#**: **969249**

♦**Docket Date Requested**: **09/25/2019**

♦**Docket Type**:

- ☐ Request for Review
- ☐ Conditional Release
- ☐ Extraordinary Review
- ☐ Addiction Recovery
- ☐ Conditional Medical Release
- ☐ Special
- Other
- ☐ DOC Recommendation
- ☐ Rescission
- ☐ Modify Parole Term and/or Conditions
- ☐ Request Early Termination
- ☐
- ☒ Other: *Remand Order*: Commission Action on PPRD establishment

☐ Miscellaneous (check type below)

♦**Continuance / Referral**: The following interview / review was continued:

☐ Initial ☐ Subsequent ☐ Effective ☐ Extraordinary ☐ Parole Supervision Review

This case was continued from the __________ docket to the __________ docket.

♦**Good Cause**: Good cause exists to place this on the September 25, 2019, docket so that the Office of the General Counsel may comply with the timeframes set by the court in the remand order.

♦**Issue/Explanation**:

This case has been remanded to the Commission by the Second Judicial Circuit, Leon County, for reconsideration and clarification.

In an extraordinary writ petition seeking mandamus relief, the inmate alleges that the Commission improperly calculated his PPRD. The Commission first heard this case on February 22, 2018, and entered its Presumptive Parole Release Date Commission Action on the same date. On June 13, 2018, the Commission granted s. 947.173, administrative review of the PPRD, but declined to make any change to the PPRD. On April 24, 2019, the Commission amended the PPRD based on new information. The aggravations in question may be found on the April 24, 2019, Amended Presumptive Parole Release Date Commission Action.

Aggravations 2, 3, & 4:

Aggravations 2, 3, & 4 were for multiple separate offenses. The Commission did not aggravate for what it presumed were the underlying felonies of the felony murder, e.g., the felonies wherein the charging information identified the victim of the murder as the victim of an underlying felony. The only multiple separate offenses the Commission aggravated for were those that had different or separate victims than did the murder.

After extensive research into this particular case, including into all appellate history and into the history of all sentencing and sentencing clarifications in the trial court, it appears that the trial court did not identify what felony or felonies were those it considered as felonies underlying the felony murder conviction.

After extensive case law research, it appears that in the absence of a designation as to which felony or felonies the trial court or appellate courts consider the underlying felonies, all felonies that occurred as part of the episode which involved the acts causing the death of the murder victim, even if those felonies were not themselves the cause of death, will be considered underlying felonies to a felony murder conviction.

Based on this information and Rule 23-21.010(2), F.A.C., Office of the General Counsel respectfully requests the Commission reconsider the imposition of Aggravations 2, 3, & 4. Additionally, if the Commission removes or deletes these aggravations in its reconsideration, the Office of the General Counsel respectfully requests the Commission determine whether the inmate will be then due for an immediate effective interview.

PANEL COMPOSITION: ☐ Panel ☐ Special Panel ☒ Full Commission
COMMISSIONERS: _____

Requested by:	**Rana Wallace, General Counsel**	Date:	09/09/2019
Approval:	**Rana Wallace, General Counsel**	Date:	09/09/2019

J:\forms\Docket Placement Form FINAL.doc