

IN THE SUPREME COURT OF FLORIDA

CASE NO.SC01-982

LOUIS B. GASKIN,

Appellant,

v.

STATE OF FLORIDA, ET. AL.,

Appellee,

INITIAL BRIEF OF THE APPELLANT

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Statement of the Case and Facts

The Office of the Capital Collateral Regional Counsel for the Middle Region of Florida is one of three state agencies established to handle the collateral appeals of death row inmates. Mr. Gaskin was a client of CCRC -Middle when the costs in dispute were incurred. On April 12th, 2001, the trial court entered an order requiring CCRC to pay all costs incident to the Defendant's post conviction capital proceedings, including the fees charged by the Clerk of the Court for the preparation of the record on appeal.

It is undisputed that Mr. Gaskin is indigent (PCR - 56).

On January 22, 2001, the County of Volusia filed a motion objecting to the Defendant's motion declaring defendant indigent for purposes of appeal. (PCR - 58). Flagler County filed a similar motion in opposition to the court granting the Defendant's motion. (PCR - 62).

The April 12th, 2001 order states that CCRC is responsible for payment of all costs incident to the Defendant's postconviction capital proceeding. (PCR - 65). The trial court relied on this Court's holdings in Orange County v. Williams, 702 So.2d 1245 (Fla. 1997), Porter v. State, 700 So.2d 647 (Fla. 1997) and Hoffman v. Haddock, 695 So.2d 682 (Fla. 1997). In denying the Defendant's motion, the court never addressed in its order whether Mr. Gaskin was indigent.

On May 4, 2001 CCRC timely appealed the trial court's order directing CCRC to pay all costs incident to the Defendant's postconviction capital proceeding which is the issue of this appeal.

Standard of Review

The standard of review is de novo because the issues are purely legal and the material facts are undisputed.

Request for Oral Argument

Louis B. Gaskin, through counsel, respectfully requests the opportunity to air the subsequent issues through oral argument.

Summary of the Argument

The Office of the Capital Collateral Regional Counsel for the Middle Region of Florida is mandated by the Florida Legislature to represent all defendants sentenced to death in state and federal collateral proceedings. All clients of CCRC are indigent and cannot afford the cost of representation.

The trial court entered an order requiring CCRC to pay for the costs of the transcript and preparing the record on appeal. In so finding, the trial court stated that there was no authority for waiving the clerk's fees and it could not compel the counties to pay such fees.

In coming to this conclusion, the trial court relied on this Court's holdings in

Orange County v. Williams, 702 So.2d 1245 (Fla. 1997), Porter v. State, 700 So.2d 647 (Fla. 1997) and Hoffman v. Haddock, 695 So.2d 682 (Fla. 1997).

CCRC appeals the trial court's order and argues that the counties can be compelled to pay for certain fees and that other fees incidental to the postconviction proceedings can be waived and, further, there exists no statutory authority compelling CCRC to pay such costs. Under section 43.28, "The counties shall provide appropriate courtrooms, facilities, equipment, and, unless provided by the state, personnel necessary to operate the circuit and county courts." This provision has been construed by this Court to mean that the counties are required by law to provide all costs necessary to operate the circuit and county courts not paid for by the state. This includes attorneys fees and costs of required counsel. Required counsel are court appointed for indigent defendants.

Regarding the court reporter's transcript costs section 27.006 reads:

- (1) State general revenue funds appropriated for purposes of court reporting shall be paid to the counties in accordance with the provisions of the General Appropriations Act.
- (2) The funds necessary to pay the costs of reporting in criminal proceedings shall be supplemented by the respective counties as necessary to provide competent reporters in such proceedings.

As such, there exists a statutory framework allowing for a third alternative to the

ones proffered by the parties: that the county pay for the costs of the transcripts and then seek reimbursement from the state.

Additionally, Article V, section 14 of the Florida Constitution was revised requiring the state to fund much of the state court system. In order to carry out the mandate of Article V, section 14, the Legislature created chapter 29 setting out the initial procedure for funding the court system. Section 29.008 requires that “Counties shall pay reasonable and necessary salaries, costs, and expenses of the state court system to meet local requirements as determined by general law.”

Further, in implementing the court funding system of Chapter 29, the

counties will continue to fund existing elements of the state courts system, state attorneys’ offices, public defenders’ offices, court-appointed counsel, and the offices of the clerks of the circuit and county courts performing court related functions, consistent with current law and practice, until such time as the Legislature expressly assumes the responsibility for funding those elements.

Until “the Legislature expressly assumes the responsibility for funding those elements” the counties are required to pay for the costs of the clerk of the courts “performing court related functions”. Section 29.001, Fla. Stat. (2000). The duties listed in section 28.24 of the Florida Statutes are “court related functions”. Using this Court’s interpretation of section 43.28, the county would be required to

continue paying for such costs.

The responsibility of CCRC to pay such costs were found as a result of this Court's misplaced reliance on the language contained in section 27.705(3) stating that "necessary expenses of office from state funds appropriated thereof". The first sentence of paragraph (3), however, is not a substantive statute, one that confers a right or imposes a duty, but a procedural limitation as illustrated by the last clause "are for a valid public purpose". The term "valid public purpose" is a limitation on governmental power and is employed in statutes and case law. As such, in using the traditional tools of statutory construction and the canons of construction, it is clear that section 27.705(3) imposes no duty upon CCRC to pay for the costs at issue in the present case.

In Williams, it is important to note that this Court found it appropriate to include as an appendix guidelines in determining "reasonable attorney fees, costs, and expenses for conflict capital representative counsel in postconviction relief proceedings." In the section entitled "Excerpt from Administration of Funds Memorandum No. II, May 7, 1997", the judge waived the cost for the service of process. As such, in the case of the indigent defendant, this Court found it appropriate that costs be waived. Additionally, because Mr. Gaskin was preparing to file a state habeas corpus petition, section 57.091, Fla. Stat. (2000), would have

been applicable. Again, as stated above, the third option available to the county is reimbursement from the state general revenue fund especially when there is the existing statutory framework allowing such costs to be paid by the county.

Consistent throughout the statutory framework and caselaw addressing this issue is reference to the term “costs”. It is clear that it is the duty of the counties to pay such costs as defined in section 43.28, Fla. Stat. (2000). In closing, it is the position of CCRC that there exists a statutory framework for the payment of certain costs and that other costs can be, and have in the past been, waived.

I. Introduction

The Office of the Capital Collateral Representative was originally created by the Legislature "to provide for the representation of any person convicted and sentenced to death in this state who is unable to secure counsel due to indigence, so that collateral legal proceedings to challenge such conviction and sentence may be commenced in a timely manner...." Section 27.7001, Fla.Stat. (1991); see also, Fla. S. Comm. Judiciary-Criminal, CS for SB 616 (1985) Staff Analysis 3 (July 15, 1985)(on file with Repository)(“The purpose of this legislation is to provide legal representation for death row inmates who are indigent and unable to afford counsel for their collateral appeals.”) Since its creation, CCRC was mandated to represent all persons convicted and sentenced to death. Section 27.7001, Fla. Stat. (Supp.

1996); See Orange County v. Williams, 702 So.2d 1245 (Fla. 1997). In 1997, after considering the recommendations of the Shevin Report and the McDonald Committee,¹ the Office of the Capital Collateral Representative was split into three regional offices. See Ch. 97-313, section 1; Allen v. Butterworth, 756 So.2d 52, 57-58 (2000). The three offices “ function independently and [are] separate budget entities”. Section 27.702, Fla. Stat. (2000).

Funding for the three offices comes from a variety of sources depending upon the services provided or received. See sections 27.702(1), Fla. Stat. (2000)(Each office shall be a separate budget entity); 27.702(3)(a), Fla. Stat. (2000)(requiring application for reimbursement from the federal government for proceedings in federal court); 27.705, Fla. Stat. (2000)(salaries of each capital collateral regional counsel and assistants shall be paid out of the general revenue fund).

On appeal in the instant action is the trial court’s denial of the Defendant’ Amended Motion Determining Indigence for Purposes of Appeal (PCR-54)(hereinafter “order”). At issue is whether the office of the Capital Collateral Regional Counsel for the Middle Region of Florida (Hereinafter CCRC) is required to pay for the costs for preparation of the record on appeal or whether any costs

¹ The Shevin report resulted from a study conducted by former Attorney General Robert Shevin. A committee was then formed and headed by former Justice Parker Lee McDonald to recommend reforms to the legislature.

may be waived if it is found that the defendant is indigent. The trial court found that there “are no statutory provisions that impose an obligation on the counties to pay the costs of [] collateral litigation and they cannot be compelled to pay such costs.” (PCR-72). In coming to this conclusion, the trial court cited this Court’s rulings in Orange County v. Williams,² Porter v. State³ and Hoffman v. Haddock.

Argument

II. Existing Statutory Framework Compels the Counties to Pay Certain Costs and Provides for the Reimbursement of Costs to the Counties.

As stated supra, the trial court found that there “are no statutory provisions that impose an obligation on the counties to pay the costs of [] collateral litigation and they cannot be compelled to pay such costs.” (PCR-66). Under section 43.28, “The counties shall provide appropriate courtrooms, facilities, equipment, and, unless provided by the state, personnel necessary to operate the circuit and county courts.” Section 43.28, Fla. Stat. (2000). This provision has been construed by this Court to mean that the counties are required by law to provide all costs necessary to operate the circuit and county courts not paid for by the state. Hoffman v. Haddock, 695 So.2d 682 (Fla. 1997)(emphasis added). “ This includes

² 702 So.2d 1245 (Fla. 1997).

³ 700 So.2d 647 (Fla. 1997).

attorneys fees and costs of required counsel.” Id. at 684 (emphasis added), citing, In re D.B. and D.S., 385 So.2d 83 (Fla. 1980) and Brevard County Bd. Of County Comm’rs v. Moxley, 526 So.2d So.2d 1023 (Fla. 5th DCA 1988). Not included in this interpretation of section 43.28 was a definition of what an actual “cost” is and whether this is different from a regular expenditure.

Elsewhere, in statutes relating to Article V of the Florida Constitution, there are definitions and duties as they relate to “costs”. Part I of Chapter 27⁴ concerns the duties of the official court reporter as they relate to Article V costs. Section 27.006 reads:

(1) State general revenue funds appropriated for purposes of court reporting shall be paid to the counties in accordance with the provisions of the General Appropriations Act.

(2) The funds necessary to pay the costs of reporting in criminal proceedings shall be supplemented by the respective counties as necessary to provide competent reporters in such proceedings.

Section 27.006, Fla. Stat. (2000)(emphasis added).

Further, section 27.0061 defines the expenditure for producing the transcript shall be “taxed as costs in the case.” Section 27.0061, Fla. Stat. (2000). Accordingly,

⁴ There is no indication in Mr. Gaskin’s record on appeal of this issue of the actual costs associated with the court reporter’s fees and the clerk’s fees for preparation of the record on appeal. It is generally argued that these are the costs at issue. See Wuornos v. State, SCO1-983.

there are statutory provisions that deal with the term “costs” and these costs are not limited to the type of proceeding whether they relate to direct appeal, a habeas petition or a collateral appeal.

In the instant case, the lower court cited this Court’s rulings in Hoffman and its progeny in holding that CCRC was responsible for all costs related to collateral proceedings. In Hoffman, the petitioner was sentenced to death for a 1980 murder. In 1990, this Court had ruled that the lower court’s summary denial of the petitioner’s 3.850 motion was error. In 1992, this Court made the same ruling. In 1997, the petitioner was scheduled to hold an evidentiary hearing on his claims but filed a motion to continue because CCR⁵ did not have adequate funds until the start of the next fiscal year. The lower court denied the motion and CCR appealed, requesting a continuance or, in the alternative, an order requiring Duval County and the City of Jacksonville to pay all costs associated with the hearing. Id. at 683-84. This Court granted a continuance until the start of CCR’s new fiscal year, but in so ruling stated that pursuant to the legislative intent of section 27.7001 and the express language of section 27.705(3) CCR was “responsible for the payment of all necessary costs and expenses.” Id. at 684.

⁵ The current Office of the Capital Collateral Regional Counsel (CCRC) was originally formed as the Capital Collateral Representative (CCR).

At the time of this Court's ruling, section 27.001 read:

It is the intent of the Legislature to create part IV of this chapter, consisting of ss.27.7001-27.708, inclusive, to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgement of its courts may be regarded with the finality to which they are entitled in the interests of justice. It is the further intent of the legislature that collateral representation shall not include representation during retrials, resentencings, proceedings commenced under chapter 940, or civil litigation.

Section 27.7001, Fla. Stat. (1995).

Section 27.705(3), the specific section relied upon by this Court in determining that CCR was responsible for all costs and expenses, read, in pertinent, as follows:

27.705 Salaries of capital collateral regional counsel and assistant capital collateral counsel.- (3)All payments of the salary of each of the capital collateral regional counsel and employees of his or her office, and payments for other necessary expenses of office from state funds appropriated therefor, are for a valid public purpose.

27.705(3), Fla. Stat. (1995)(emphasis added).

In so ruling, this Court relied on the language emphasized above and the limitation in section 43.28, quoted supra, in conferring a duty upon CCR to pay all costs. While counsel for CCR in Hoffman may have conceded some duty to pay

costs of the proceedings, it is the position of current counsel on the limited question presented that this agency is not obligated to pay costs for the record on appeal.

There is no direct language in part IV of Chapter 27 requiring the CCRCs to pay for transcripts or the record on appeal. It is clear from the language of section 43.28, F.S. (2000), and Hoffman, that the counties are required to pay for such costs for indigent defendants. In deciding the issue presented in Hoffman, however, this Court did not recognize a third alternative available to the county, that while initially paying for such costs, the county shall seek reimbursement from the state.

In the instant action, the court order directs CCRC to pay “all costs incident to the Defendant’s postconviction capital proceedings” (PCR-65), again on the basis that “[t]here are no statutory provisions that impose an obligation on the counties”. Id at 66. This is in direct contradiction to Section 27.006 of the Florida Statutes. Section 27.0061 defines that the expenditure for producing the transcript shall be “taxed as costs in the case.” As such, the cost of the transcript charges should be borne by the counties which therefore have the duty to seek reimbursement from

the state.⁶

III. The Florida Constitution As Revised and the Enacting Statutes Requires the Counties to Pay Certain Costs until the State Can Implement the Court Funding System

Recently, the 1968 Florida Constitution was revised. One revision to Article V was an amendment to section 14 which states, in pertinent part:

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall

⁶ This is also consistent with the concerns of Hoffman (Wells, J. concurring) in which the issue of an expert fee of \$6000.00 was raised as possibly being excessive. Such expenses are clearly within the proscribed duties of CCRC to pay and the agency has a duty to spend its resources wisely. Under Chapter 27, CCRC has no control over who is designated as the “official court reporter”. As such, it has no control over the price of the contract for reporting services. As recognized in Porter v. State, 700So.2d 647 (Fla. 1997), there is wide discrepancy in the costs and efficiency of the various “official court reporters”. Since the county has no incentive in such matters to bargain for the best price, the burden is shifted to CCRC which may suffer for the county’s contract with an expensive reporting agency.

provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel^[7] or the offices of the clerks of the circuit and county courts for performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

Article V, section 14 (1998 revised)(emphasis added).

In order to carry out the mandate of Article V, section 14, the Legislature created Chapter 29 setting out the initial procedure for funding the court system.

Ch. 2000-237, section 1, Laws of Fla. Section 29.008 requires that “Counties shall pay reasonable and necessary salaries, costs, and expenses of the state court system to meet local requirements as determined by general law.” Section

⁷ Under the definition of court-appointed counsel provided for in Chapter 29, Capital Collateral Regional Counsel and their assistants are not included. See 29.007, Fla. Stat. (2000).

29.008(2), Fla. Stat. (2000)(emphasis added). Further, in implementing the court funding system of Chapter 29, the

counties will continue to fund existing elements of the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel, and the offices of the clerks of the circuit and county courts performing court related functions, consistent with current law and practice, until such time as the Legislature expressly assumes the responsibility for funding those elements.

Section 29.001, Fla. Stat. (2000)(emphasis added).

In the present case, it is clear that the trial court was concerned with taxing the citizens of Volusia and Flagler Counties for the cost of Mr. Gaskin's collateral appeal. It was this same concern that led to the revision of Article V, section 14 of the Florida Constitution. Since Article V, section 14 is not self-executing, the Legislature enacted Chapter 29 to implement the provisions of Article V, section 14. Until "the Legislature expressly assumes the responsibility for funding those elements" the counties are required to pay for the costs of the clerk of the courts "performing court related functions". Section 29.001, Fla. Stat. (2000). The duties listed in section 28.24 of the Florida Statutes are "court related functions" as opposed to those duties the clerk performs as the chief fiscal agent for a county or as other duties allowed by law. See section 43.28, Fla. Stat. (2000), as construed

by, Hoffman, 695 So.2d at 684. Until the funding provisions of Chapter 29 are expressly assumed by the Legislature, the county again should be required to seek reimbursement, this time under section 57.091 of the Florida Statutes.⁸

IV. This Court Misread the Provisions of Section 27.705(3) in Deciding Williams, Porter and Hoffman

There is no direct language in part IV of Chapter 27 requiring CCRC to pay for transcripts or the record on appeal. Rather, the responsibility to pay such costs were found as a result of this Court's misplaced reliance on the language contained in section 27.705(3) stating that "necessary expenses of office from state funds appropriated thereof". Section 27.705(3), Fla. Stat. (1995). The first sentence of paragraph (3), however, is not a substantive statute, one that confers a right or imposes a duty, but a procedural limitation as illustrated by the last clause "are for a valid public purpose". Id.

The limitation of power as used by the term "valid public purpose" appears frequently case in law and less frequently in statutes. See sections 27.25(4); 27.54(1); 27.705(3); and, 316.006(4), Fla. Stat. (2000).⁹ Generally, the term "valid public purpose" is used to limit the government's exercise of power. For example,

⁸ See, infra, section V.

⁹ Sections 196.199(2)(a) and 196.012(6), Fla. Stat. (2000) use the term "public purpose".

in order for counties to issue certain types of bonds and tax its residents, the purpose for the expenditure must be a “valid public purpose”. See Boschen v. City of Clearwater, 777 So.2d 958 (Fla. 2001); Art. VII, section 10, Fla. Const.. In order for a “taking” to be constitutional, it also must serve a “valid public purpose”. Article X, section 6, Fla. Const.; see State Dept. of Transportation v. Barbara’s Creative Jewelry, Inc., 728 So.2d 240 (Fla. 1998). In many cases, to be exempt from ad valorem taxes, the service, property, or business must serve a “valid public purpose”. See Page v. City of Fernandina Beach, 714 So.2d 1070 (Fla. 1998); section 196.012(6), Fla. Stat. (2000).

In utilizing the law of statutory construction, all words of a statute or constitutional provision should be given effect and no words should be considered superfluous. See Burnsed v. Seaboard Coastline Railroad Co., 290 So.2d 13 (Fla. 1974); In re Apportionment Law, 263 So.2d 797 (Fla. 1972). In addition, when construing statutes and constitutions, every section should be considered so they will be given effect as a harmonious whole. See Askew v. Game and Freshwater Fish Commission, 336 So.2d 556 (Fla. 1976). Relying on the canon of construction in para materia, provisions concerning the same subject should be construed together. Burnsed, 290 So.2d at 16.

Therefore, the construction of section 27.705(3) is irrelevant to the current case

as it relates to the duty of CCRC to pay for the costs of the transcript and preparation of the record.

V. The Counties Can be Compelled to pay for the Record for the Indigent Defendant in Collateral Cases and Can be Reimbursed by the State

A prisoner has no absolute constitutional right to appointed counsel in a collateral attack on his conviction. Brevard Board of County Commissioners v. Moxley, 526 So.2d 1023 (Fla. 5th DCA 1988), citing Pennsylvania v. Finley, 481 U.S. 551 (1987). However, as recognized in Moxley, constitutional rights can be implicated in collateral proceedings under the due process clause of Article I, Section 9 of the Florida Constitution.¹⁰ Moxley, 526 So.2d at 1026. As argued above, section 43.28 of the Florida Statutes mandates that attorney fees and costs be paid in court appointed counsel cases because the attorney is considered “required personnel”. When a defendant is declared indigent and appointed collateral counsel under a statutory right, these constitutional rights become implicated. Since there is no express provision in Chapter 27 requiring CCRC to pay such costs, the duty rests upon the county to pay the costs and then seek reimbursement from the state.

¹⁰ The court also recognized the federal due process right of a defendant can be implicated in such cases relying on State v. Weeks, 166 So.2d 892 (Fla. 1964).

Additionally, in Williams, it is important to note that this Court found it appropriate to include as an appendix to the opinion a copy of Judge Susan Schaeffer's¹¹ guidelines in determining "reasonable attorney fees, costs, and expenses for conflict capital representative counsel in postconviction relief proceedings." Williams, 702 So.2d at 1249. In the section entitled "Excerpt from Administration of Funds Memorandum No. II, May 7, 1997", Id. at 1249, Judge Schaeffer waived the cost for the service of process.

5) Service of Process. The sheriff should serve subpoenas at no cost since your defendants are indigent. Since you can use the sheriff at no cost, do not bill for private process servers, unless there were exigent circumstances which must be explained to my satisfaction.

Id.(emphasis added).

As such, in the case of the indigent defendant, this Court found it appropriate that costs be waived. While the trial court did not make a finding in it's order declaring Mr. Gaskin to be indigent, it is clear that he meets these standards. (PCR-56); see also section 27.702(b)(using the standard of indigence relating to clients of the public defender). Additionally, because Mr. Gaskin was preparing to file a state

¹¹ Judge Schaeffer was designated by this Court as the judicial officer to establish reasonable attorney fees, costs, and expenses for conflict capital representative counsel in post conviction relief proceedings.

habeas corpus petition, section 57.091, Fla. Stat. (2000), would have been applicable. This section reads, in pertinent part:

All lawful fees, costs, and expenses hereafter adjudged against, and paid by, any county in all competency proceedings and all criminal prosecutions against state prisoners imprisoned in a state correctional institution, and in all habeas corpus cases brought to test the legality of the imprisonment of state prisoners of such correctional institutions, shall be refunded to the county paying the sum from the General Revenue Fund in the State Treasury....

Id.

Again, as stated above, the third option available to the counties is reimbursement from the state general revenue fund especially when there is the existing statutory framework allowing such costs to be paid by the county.

Conclusion

Consistent throughout the statutory framework and caselaw addressing this issue is reference to the term “costs”. It is clear that it is the duty of the county to pay such costs as defined in section 43.28, Fla. Stat. (2000) and construed by Hoffman. CCRC disputes the findings of the trial court in this action and argues that there exists a statutory framework for the payment of certain costs and that other costs can, and have been in the past, waived. CCRC requests that this Court reverse the order of the trial court and enter a judgement in favor of CCRC.

Alternatively, CCRC requests that this Court reverse the trial court's order and remand this case back for a hearing to determine which costs are to be paid by the respective parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing **INITIAL BRIEF OF THE APPELLANT** has been furnished by United States Mail, first Class postage prepaid, to all counsel of record on this 22nd day of August, 2001.

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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing **INITIAL BRIEF OF APPELLANT**, was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210.

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